District of Columbia Code

1961 EDITION ☆ SUPPLEMENT IV

1965

TITLES 1-49

TABLES AND INDEX

OFFICE OF LAW REVISION COUNSEL

DISTRICT OF COLUMBIA CODE

1961 EDITION

SUPPLEMENT IV

LAWS—January 3, 1961, to January 3, 1965

NOTES TO DECISIONS—January 1, 1961, to September 30, 1964

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COMMITTEE ON THE JUDICIARY

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PREFACE

This fourth supplement to the District of Columbia Code, containing the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia (except such laws as are of application in the District of Columbia by reason of being general and permanent laws of the United States), enacted during the Eighty-seventh and Eighty-eighth Congresses, has been prepared and published by the Committee on the Judiciary of the House of Representatives under authority of Sections 202, 203 of Title 1, United States Code. This supplement, together with the 1961 edition, contains the laws of the District of Columbia in force on January 3, 1965.

The 1961 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to September 30, 1964, in this supplement.

Particular attention of the users of this Code is directed to Part II, Judiciary and Judicial Procedure, consisting of Titles 11 to 17, and to Title 28. These titles have now been enacted as law as part of a comprehensive plan of the Committee to enact the entire Code. Also Title 28 "Commercial Instruments and Transactions" has been enacted effective as of January 1, 1965. Subtitle I of that title comprises the Uniform Commercial Code which has now been adopted by a majority of the States.

The Committee gratefully acknowledges the assistance of Dr. Charles J. Zinn, Law Revision Counsel, and Joseph Fischer, Esquire, Assistant Law Revision Counsel, of the Committee, and of all others who have helped in the preparation of this supplement.

The Committee again invites suggestions and criticisms by users of the Code.

Emanuel Celler

Chairman, Committee on the Judiciary

E. E. Willis

Chairman, Subcommittee No. 3
Committee on the Judiciary

WASHINGTON, D.C.
January 3, 1965

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENTS

* * *

ARTICLE [XXIII]

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

PROPOSAL AND RATIFICATION

This amendment was proposed by the Eighty-sixth Congress on June 16, 1960 and was declared by the Administrator of General Services on Apr. 3, 1961, to have been ratified.

The amendment was ratified by the following States: Hawaii, June 23. 1960; Massachusetts, Aug. 22, 1960; New Jersey, Dec. 19, 1960; New York, Jan. 17, 1961; California Jan. 19, 1961; Oregon, Jan. 27, 1961; Maryland, Jan. 30, 1961; Idaho, Jan. 31, 1961; Maine, Jan. 31, 1961; Minnesota, Jan. 31, 1961; New Mexico, Feb. 1, 1961; Nevada, Feb. 2, 1961; Montana, Feb. 6, 1961; Colorado, Feb. 8, 1961; Washington, Feb. 9, 1961; West Virginia, Feb. 9, 1961; Alaska, Feb. 10, 1961; Wyoming, Feb. 13, 1961; South Dakota, Feb. 14, 1961; Delaware, Feb. 20, 1961; Utah, Feb. 21, 1961; Wisconsin, Feb. 21, 1961; Pennsylvania, Feb. 28, 1961; Indiana, Mar. 3, 1961; North Dakota, Mar. 3, 1961; Tennessee, Mar. 6, 1961; Michigan, Mar. 8, 1961; Connecticut, Mar. 9, 1961; Arizona, Mar. 10, 1961; Illinois, Mar. 14, 1961; Nebraska, Mar. 15, 1961; Vermont, Mar. 15, 1961; Iowa, Mar. 16, 1961; Missouri, Mar. 20, 1961; Oklahoma, Mar. 21, 1961; Rhode Island, Mar. 22, 1961; Kansas, Mar. 29, 1961; Ohio, Mar. 29, 1961, and New Hampshire, Mar. 30, 1961.

CERTIFICATION OF VALIDITY

Publication of the certifying statement of the Administrator of General Services that the Amendment had become valid was made on Apr. 3, 1961, F.R. Doc. 61–3017, 26 F.R. 2808.

ARTICLE [XXIV]

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

PROPOSAL AND RATIFICATION

This amendment was proposed by the Eighty-seventh Congress on August 27, 1962, and was declared by the Administrator of General Services on Feb. 4, 1964, to have been ratified.

The amendment was ratified by the following States: Illinois, Nov. 14, 1962; New Jersey, Dec. 3, 1962; Oregon, Jan. 25, 1963; Montana, Jan. 28, 1963; West Virginia, Feb. 1, 1963; New York, Feb. 4, 1963; Maryland, Feb. 6, 1963; California, Feb. 7, 1963; Alaska, Feb. 11, 1963; Rhode Island, Feb. 14, 1963; Indiana, Feb. 19, 1963; Utah, Feb. 20, 1963; Michigan, Feb. 20, 1963; Colorado, Feb. 21, 1963; Ohio, Feb. 27, 1963; Minnesota, Feb. 27, 1963; New Mexico, Mar. 5, 1963; Hawaii, Mar. 6, 1963; North Dakota, Mar. 7, 1963; Idaho, Mar. 8, 1963; Washington, Mar. 14, 1963; Vermont, Mar. 15, 1963; Nevada, Mar. 19, 1963; Connecticut, Mar. 20, 1963; Tennessee, Mar. 21, 1963; Pennsylvania, Mar. 25, 1963; Wisconsin, Mar. 26, 1963; Kansas, Mar. 28, 1963; Massachusetts, Mar. 28, 1963; Nebraska, Apr. 4, 1963; Florida, Apr. 18, 1963; Iowa, Apr. 24, 1963; Delaware, May 1, 1963; Missouri, May 13, 1963; New Hampshire, June 12, 1963; Kentucky, June 27, 1963; Maine, Jan. 16, 1964; South Dakota, Jan. 23, 1964.

CERTIFICATION OF VALIDITY

Publication of the certifying statement of the Administrator of General Services that the Amendment had become valid was made on Feb. 4, 1964, F.R. Doc. 64–1229, 29 F.R. 1715–1716.

DISTRICT OF COLUMBIA CODE
1961 Edition

SUPPLEMENT IV

LAWS—January 3, 1961, to January 3, 1965

NOTES TO DECISIONS—January 1, 1961, to September 30, 1964

THE CODE OF THE DISTRICT OF COLUMBIA

PART I

GOVERNMENT OF DISTRICT

[Judiciary Excepted]

TITLE 1—ADMINISTRATION.
TITLE 2—DISTRICT BOARDS AND COMMISSIONS.
TITLE 3—BOARD OF PUBLIC WELFARE.
TITLE 4—POLICE AND FIRE DEPARTMENTS.
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.
TITLE 6—HEALTH AND SAFETY.
TITLE 7—HIGHWAYS, STREETS, BRIDGES.
TITLE 8—PARKS AND PLAYGROUNDS.
TITLE 9—PUBLIC BUILDINGS AND GROUNDS.
TITLE 10—WEIGHTS, MEASURES, AND MARKETS.

TITLE 1.—ADMINISTRATION

Chapter 2.—COMMISSIONERS AND OTHER OFFICERS

Sec.
1–204a. Compensation of President of Board of Commissioners.
1–204b. Compensation of Commissioners.
1–224b. Regulations for the keeping and running at large of dogs.

§ 1–204a. Compensation of President of Board of Commissioners.

Notwithstanding any other provision of law—

(1) the compensation of the President of the Board of Commissioners of the District of Columbia shall be at the rate of $26,000 per annum; and

(2) if the Commissioner detailed from the Corps of Engineers of the United States Army is chosen President of the Board of Commissioners, he shall receive, as President of the Board, an annual compensation which, when added to any compensation he receives as an officer of the United States Army, will equal the compensation authorized by paragraph (1) of this section.

(July 25, 1958, 72 Stat. 414, Pub. L. 85–552, § 3; Aug. 14, 1964, 78 Stat. 430, Pub. L. 88–426, § 301(i)(1).)

AMENDMENTS

1964—Section 306(i)(1) of act Aug. 14, 1964, amended section to read as above set out.

EFFECTIVE DATE OF ACT AUG. 14, 1964

Section 501(a) of the above described act provided as follows: "(a) Except to the extent provided in subsections (b) and (c) of this section, this Act and the increases in compensation made by this Act shall become effective on the first day of the first pay period which begins on or after July 1, 1964."

Subsections (b) and (c) have no application to this section.

This "Act" insofar as it relates to the District of Columbia, amends sections 1–204a, 1–204(b), 4–823, 11–702(d), 11–902(d), 31–1501 and 47–2402.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

Section 501(d) of the above described act provides as follows: "(d) For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954, all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of such enactment."

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

Section 502 (a) and (b) of the above described act provides as follows: "(a) Retroactive compensation or salary shall be paid by reason of this Act only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or employee who retired during the period beginning on the effective date prescribed by section 501(a) and ending on the date of enactment of this Act for services rendered during such period and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended (5 U.S.C. 61f–61k), for services rendered during the period beginning on the effective date prescribed by section 501(a) and ending on the date of enactment of this Act by an officer or employee who dies during such period. Such retroactive compensation or salary shall not be considered as basic salary for the purpose of the Civil Service Retirement Act in the case of any such retired or deceased officer or employee.

"(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia."

§ 1–204b. Compensation of Commissioners.

Except as otherwise provided by this section and and section 1–204a—

(1) the compensation of the Commissioners of the District of Columbia shall be at the rate of $25,500 each per annum; and

(2) the Commissioner detailed from the Corps of Engineers of the United States Army shall receive an annual compensation which, when added to any compensation he receives as an officer of the United States Army, will equal the compensation authorized by paragraph (1) of this section.

(July 25, 1958, 72 Stat. 414, Pub. L. 85–552, § 2; Aug. 14, 1964, 78 Stat. 430, Pub. L. 88–426, § 306(i)(1).

AMENDMENTS

1964—Section 306(i)(1) of act Aug. 14, 1964, amended section to read as above set out.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

§ 1–224. Police regulations authorized in certain cases.

* * * * *

Seventh. To regulate the keeping of dogs and fowls.

* * * * *

(As amended Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 3.)

AMENDMENT

1961—Section 3 of act Sept. 13, 1961, amended paragraph "Seventh" of the section by striking out the words "and running at large", so that the paragraph now reads, "To regulate the keeping of dogs and fowls."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this Amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

CROSS REFERENCE

For Commissioners' authority to make regulations regarding dogs, see section 1–224b in this supplement.

§ 1–224b. Regulations for the keeping and running at large of dogs.

The Commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce regulations in and for the District of Columbia to regulate the keeping and leashing of dogs and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations as provided in section 1–224a. (Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 1.)

EFFECTIVE DATE

Section 4 of act Sept. 13, 1961, makes this section "effective thirty days after the date of its approval" [Sept. 13, 1961].

CROSS REFERENCES

For other provisions relating to keeping and handling of dogs, see sections 1–230, 22–1111, 47–2003, and 47–2004.

§ 1–226. Regulations for protection of life, health, and property.

NOTES TO DECISIONS

3.50. Source of authority

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." *R. L. Jones et al., The Ellen Real Estate Corp. et al.* v. *The District of Columbia* (1963, 212 F. Supp. 438).

§ 1–228. Building regulations.

NOTES TO DECISIONS

5.50. Source of authority

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." *R. L. Jones et al., The Ellen Real Estate Corp. et al.* v. *The District of Columbia* (1963, 212 F. Supp. 438).

§ 1–243. Rent for quarters.

TERM OF LEASE

REPEATED

1964—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88–479, § 12.

1963—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88–252, § 12.

Section 12 of the District of Columbia Appropriations Act, Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87–867, provided that: "Appropriations in this Act shall be available when authorized by the Commissioners, for the rental of quarters without reference to section 6 of the District of Columbia Appropriation Act, 1945."

§ 1–263. Advancement of moneys by disbursing officer.

The disbursing officials designated by the Commissioners are authorized to advance to such officials as may be approved by the Commissioners such amounts and for such purposes as the Commissioners may determine. (Sept. 21, 1961, 75 Stat. 564, Pub. L. 87–265, § 7.)

SIMILAR PROVISIONS

1964—Aug. 22, 1964, 78 Stat. 592, Pub. L. 88–479, § 7.

1963—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88–252, § 7.

1962—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87–867, § 7.

Section was enacted as part of the District of Columbia Appropriation Act 1962, act Sept. 21, 1961. Similar provisions are contained in appropriation act Apr. 8, 1960, 74 Stat. 30, Pub. L. 86–412, § 7. For other similar provisions see main volume of the Code.

Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

§ 1–311. Compensation of injured employees.

CODIFICATION

Act Oct. 3, 1961, 75 Stat. 751, Pub. L. 87–339, amended section 104 of the Federal Employees Compensation Act Amendments of 1960 [act Sept. 13, 1960, 74 Stat. 906, Pub. L. 86–767] by inserting into the first proviso the following: ", except that this section shall apply to employees of the government of the District of Columbia other than members of the police and fire departments who are pensioned or pensionable under the provisions of the Policemen and Firemen's Retirement and Disability Act." [§§ 4–521 to 4–538].

Section 104 of the Federal Employees Compensation Act Amendments of 1960, is set out as a note to 5 U.S.C. 790.

Chapter 4.—COMMISSIONERS OF DEEDS

Sec.

1–401. Repealed.

1–402. Omitted.

§ 1–401. Repealed. Sept. 25, 1962, 76 Stat. 594, Pub. L. 87–694, § 1.

Section of act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 557, related to the appointment of commissioners of deeds, by the President of the United States.

§ 1–402. Omitted.

AMENDMENT

Section 2 of act Sept. 25, 1962, Pub. L. 87–694, 76 Stat. 594, amended act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559, which was this section, by striking the words "commissioners of deed and" making the section no longer applicable to commissioners of deeds, and since section 1–401 was repealed by section 1 of the same act, it is omitted. The same section of act Mar. 3, 1901, relating to notaries public is set out as § 1–502.

Chapter 5.—NOTARIES PUBLIC

§ 1–502. Tenure of office.

AMENDMENT

1962—Section 2 of act Sept. 25, 1962, Pub. L. 87–694, 76 Stat. 594, amended section by striking the words "com-

missioners of deeds and". See note to section 1–402. Sections 1–402 and 1–502 were both based on act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

§ 1–719. Electric wiring—Inspection—Rules and regulations—Fees.

NOTES TO DECISIONS

Judicial notice 1
Record on appeal 2

1. Judicial notice

Judicial notice would not be taken that incompetent repairman might injure or kill telephone user by connecting television lead-in to high voltage in television set. *R. A. Harris et al.* v. *W. N. Tobriner et al.* (1962, 304 F. 2d 377, 113 U.S. App. D.C. 10).

In view of electrical contractor's denial that incompetent repairman could cause injury by running of television lead-in wires and telephone wires in same conduit such hazard must be established by competent evidence before Board of Appeals and Review. *Id.*

2. Record on appeal

Review by district court of order of District of Columbia Board of Appeals and Review directing electrical contractor to remove lead-in wires for master television system from conduits already containing telephone wires should have consisted of full hearing upon record of proceedings before Board and summary judgment should not have been granted against contractor. *R. A. Harris et al.* v. *W. N. Tobriner et al.* (1962, 304 F. 2d 377, 113 U.S. App. D.C. 10).

Chapter 8.—CONTRACTS

§ 1–804. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.

NOTES TO DECISIONS

Construction 3
Liability under prime contractor's bond 6
Limitation on intervention 7

3. Construction

Statute regarding furnishing of contractor's payment bond for any public building is to be liberally construed in favor of those who contribute labor or materials for public works. *Humphreys & Harding, Inc. et ano.* v. *District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

6. Liability under prime contractor's bond

Under statute requiring contractor for public building to give a contractor's payment bond to pay all persons supplying labor or materials, contractor, which placed verbal order for pilings with lumber company, which had plaintiff creosote pilings as required by contract, was liable when lumber company failed to pay plaintiff fully for creosote work. *Humphreys & Harding, Inc. et ano.* v. *District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

Under statute regarding the furnishing of a contractor's payment bond for construction of any public building, it is not necessary that a supplier of materials have any contractual relationship with the prime contractor. *Id.*

7. Limitation on intervention

For purposes of District of Columbia statute providing that suit instituted by creditors on bond of contractor with district must be commenced within one year after performance and "final settlement" of contract, "final settlement" occurred not when Director of Department of Buildings and Grounds of district accepted all work performed under contract but rather subsequently when he approved final voucher for payment owing contractor. *District of Columbia etc.* v. *B. F. Rodney Co. et ano.* (1963, 219 F. Supp. 192).

Chapter 9.—CLAIMS AGAINST DISTRICT

§ 1–922. Negligent operation of vehicles by employees—Defense of governmental immunity—Exception.

NOTES TO DECISIONS

Constitutionality 1
Construction 2
Reasonableness of legislation 3

1. Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionality deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372; aff'd 302 F. 2d 927).

Claims of unconstitutionality of statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead for an action against the District, were insubstantial, and did not require the convening of a three-judge court to dispose of them. *R. J. Rohrlack* v. *T. R. Goff, E. J. Taylor and District of Columbia* (1961, 197 F. Supp. 670).

2. Construction

District of Columbia Employee Non-Liability Act which provides for waiver of governmental immunity and makes District of Columbia liable, in case of an emergency vehicle, only for gross negligence, had no application to accident involving police vehicle which occurred some five months prior to enactment of statute. *R. L. Gibbs* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 891).

Resolution of conflicting interests among District of Columbia employees, the District itself, and persons injured through negligence of District employees acting within scope of their employment, was a permissible legislative object, and District of Columbia Employee Non-Liability Act providing that in any pending action against an employee in which the District was not named as the defendant, the District should be joined as a defendant and the employee dismissed, was not unconstitutional in its prospective operation. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372; aff'd 302 F. 2d 927).

District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

3. Reasonableness of legislation

Statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead an action against the District, but limiting the liability of the District for acts committed in emergency vehicles during emergency runs to acts of gross negligence, constituted a reasonable exercise of police power. *R. J. Rohrlack* v. *T. R. Goff, E. J. Taylor and District of Columbia* (1961, 197 F. Supp. 670).

Due process prevents only such retroactive legislation as is unreasonable and fact that positions held before enactment of legislation are adversely affected by it does not render such legislation per se unreasonable. *Id.*

Retrospective application of statute immunizing District of Columbia policemen from liability for act performed within the scope of their employment resulting in dismissal of action against policeman who had been involved in automobile collision, was not unreasonable where there was no claim that plaintiff's conduct would have been different if immunity rule had been known or change foreseen at time of accident. *Id.*

§ 1–925. Action against District employees barred for negligent operation of vehicles—Exception.

NOTES TO DECISIONS

Constitutionality 1
Construction 2

1. Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionally deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).

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District of Columbia Employee Non-Liability Act which provides for waiver of governmental immunity and makes District of Columbia liable, in case of an emergency vehicle, only for gross negligence, had no application to accident involving police vehicle which occurred some five months prior to enactment of statute. *R. L. Gibbs* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 891).

Resolution of conflicting interests among District of Columbia employees, the District itself, and persons injured through negligence of District employees acting within scope of their employment, was a permissible legislative object, and District of Columbia Employee Non-Liability Act providing that in any pending action against an employee in which the District was not named as the defendant, the District should be joined as a defendant and the employee dismissed, was not unconstitutional in its prospective operation. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).

District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

Chapter 11.—ELECTIONS

Sec.

1–1101. Election of electors of President and Vice President, and officials of political parties.
1–1106. Board independent agency—District to furnish facilities to Board—Seal.
1–1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.
1–1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.
1–1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

§ 1–1101. Election of electors of President and Vice President, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

(1) National committeemen and national committee women;

(2) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(3) Alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and

(4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large in the District of Columbia. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1(1).)

AMENDMENTS

1961—Section 1(1), act Oct. 4, 1961, amended the section by inserting at the beginning thereof the words: "In the District of Columbia electors of President and Vice President of the United States and".

Section 1(25), act Oct. 4, 1961, amended the title of the chapter to read as follows: "An Act to regulate the election in the District of Columbia of electors of President and Vice President of the United States and of delegates representing the District of Columbia to national political conventions, and for other purposes."

APPLICABILITY OF FEDERAL VOTING ASSISTANCE ACT

Section 2(c), act Oct. 4, 1961, provided that: "For the purposes of the Federal Voting Assistance Act of 1955, the word 'State' shall be deemed to include the District of Columbia." This act is set out in 5 U.S.C. 2171 et seq.

CROSS REFERENCES

For definition of "State" and executives of each State as including the District of Columbia and its Board of Commissioners, see 1 U.S.C. 21.

For provisions of constitutional amendment [Articles XXIII] granting the District of Columbia authority to appoint electors of President and Vice President see page xi in this supplement.

§ 1–1102. Definitions.

For the purposes of this chapter—

(1) The term "District" means the District of Columbia.

(2) The term "qualified elector" means a citizen of the United States (a) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this chapter, has resided in the District continuously since the beginning of the one-year period ending on the day of such election; (b) who is, or will be on the day of the next election, twenty-one year old; (c) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (d) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 1–1103. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 1(26).

AMENDMENT

1961—Section 1(26), act Oct. 4, 1961, amended clause (a) of par. (2) of the section to read as above set out. The wording of the clause before this amendment is set out in the main volume of the Code.

§ 1–1103. Board of elections—Terms of office.

AMENDMENT

1961—Section 1(2), act Oct. 4, 1961, Pub. L. 87–389, amended the section by inserting at the end thereof the following sentence: "The said Commissioners shall from time to time designate the Chairman of the Board."

§ 1–1105. Functions and authority of Board.

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) conduct registrations and elections;

(3) provide for recording and counting votes by means of ballots or machines or both and not less than five days before each election held pursuant to this chapter, publish in one or more newspapers of general circulation in the District a copy of the official ballot to be used in any such election;

(4) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons;

(5) operate polling places;

(6) develop and administer procedures for absentee registration for and voting in any election held under this chapter by any person included within the categories referred to in paragraphs (1), (2), (3), or (4) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [5 U.S.C. 2171].

(7) certify nominees and the results of elections; and

(8) perform such other duties as are imposed upon it by this chapter.

(b) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to sections 1–1107 and 1–1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(c) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter, including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter.

(d) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Commissioners of the District of Columbia, without reference to the provisions of the Classification Act of 1949, as amended. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1 (3), (4), (5), (6).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (d), is classified to U.S. Code, Title 5, chapter 21.

AMENDMENTS

1961—Section 1(3), act Oct. 4, 1961, amended par. (1) of subsection (a) by striking out, "permanent".

Section 1(4), of same act, amended par. (3) of subsection (a) to read as above set out. The original wording of par. (3) is set out in the main volume of the Code.

Section 1(5) of the same act, amended the first sentence of subsection (b) by striking the words: "the Board, and persons authorized by it" and inserting in lieu thereof the words: "Each member of the Board and persons authorized by the Board" and by striking the period at the end of subsection (c) and inserting the following: ", including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter."

Section 1(6) of the same act renumbered pars. (6) and (7) of subsection (a) as pars. (7) and (8) and inserted a new par. (6) as above set out.

§ 1–1106. Board independent agency—District to furnish facilities to Board—Seal.

* * * * *

(c) Subject to the approval of the Commissioners of the District of Columbia, the Board is authorized to adopt and use a seal. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 6; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1(7).)

AMENDMENT

1961—Section 1(7), act Oct. 4, 1961, amended the section by adding subsection (c) thereto.

§ 1–1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.

(a) A person shall be entitled to vote in an election in the District of Columbia only if he is a qualified elector and, except as provided in subsection (e) of this section, he registers in the District during the year in which such election is to be held.

(b) No person shall be registered unless—

(1) he is a qualified elector;

(2) he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he meets each of the requirements specified in section 1–1102(2) for a qualified elector or qualifies under procedures established by the Board under paragraph (6) of subsection (a) of section 1–1105, and, if he desires to vote in a party election, such form shall show his political party affiliation.

(c) In administering the provisions of subsection (b) (2), the Board shall prepare and use a registration affidavit form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b).

(d) The registry shall be open from January 1 until forty-five days before the first Tuesday following the first Monday in November during each presidential election year except the forty-five day period which ends on the first Tuesday in May, and except as provided by the Board in the case of a special election. The Board may close the registry on Saturdays, Sundays and holidays. While the registry is open, any person may apply for registration or change his registration.

(e) If a person is not permitted to register, such person, or any qualified candidate, may appeal to the Board, but not later than three days after the registry is closed for the next election. The Board shall decide within five days after the appeal is perfected whether the challenged elector is entitled to register. If the appeal is denied, the appellant may, within three days after such denial, appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the appeal is upheld by either the Board or the court, the challenged elector shall be allowed to register immediately. If the appeal is pending on election day, the challenged elector may

cast a ballot marked "challenged", as provided in section 1–1109 (d). (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, 818, Pub. L. 87–389, § 1(8, 9, 10, 11).)

AMENDMENTS

1961—Section 1(8), act Oct. 4, 1961, amended subsection (a) to read as above set out. The original wording of subsection (a) is set out in the main volume of the Code.

Section 1(9) of the same act, amended pars. (2) and (3) of subsection (b) to read as above set out. The original wording of former pars. (2) and (3) are set out in the main volume of the Code.

Section 1(10) of the same act, amended subsection (c) by striking "(b) (3)" and inserting in lieu thereof "(b) (2)".

Section 1(11) of the same act amended the first sentence of subsection (d) to read as above set out. The wording of the sentence prior to amendment is set out in the original Code.

§ 1–1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.

(a) Candidates for office participating in an election of the officials referred to in clauses (1), (2), and (3) of section 1–1101 and of officials designated pursuant to clause (4) of such section shall be the persons registered under section 1–1107 who have been nominated for such office by a petition—

(1) prepared and presented to the Board in accordance with rules prescribed by the Board, but not later than thirty days before the date of the election; and

(2) signed by not less than one hundred voters, registered under section 1–1107, and of the same political party as the nominee.

(b) No such person shall hold elected office pursuant to this chapter unless he has been a bona fide resident of the District of Columbia continuously since the beginning of the three-year period ending on the date of the next election, and is a qualified elector registered under section 1–1107.

(c) The Board shall arrange the ballot of each political party so as to enable the voters of such party—

(1) to vote for the candidates duly qualified and nominated for election by such party under this chapter; and

(2) to answer in the affirmative or negative such questions relating to the conduct of the affairs of such party as the duly authorized local committee of such party may file with the Board in writing: *Provided, however,* That the questions shall be so filed not later than thirty days before the date of the election.

(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections on or before September 1 next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 5 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before August 15 preceding the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this chapter unless (1) he is a registered voter in the District and (2) he has been a bona fide resident of the District for a period of three years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and it shall be his duty to vote in such manner in the electoral college. (Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8; Oct. 4, 1961, 75 Stat. 818, 819, Pub. L. 87–389, § 1 (12, 13).)

AMENDMENT

1961—Section 1(12), act Oct. 4, 1961, amended the portion of subsection (a) which precedes par. (1) to read as above set out.

Section 1(13) of the same act, further amended the section by adding subsections (d), (e), (f) and (g) thereto.

§ 1–1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.

(a) Voting in all elections shall be secret.

(b) The vote of a person who is registered as a resident of the District shall be valid only if cast in the voting precinct where the residence shown on his registration is located. The Board shall by regulation permit voting for electors of President and Vice President by any registered elector who is absent from the District or who, because of his physical condition, is unable to vote in person at the polling place in his voting precinct on election day.

(c) * * *

(d) * * *

(e) If a person has been permitted to vote only by challenged ballot, such person, or any qualified candidate, may appeal to the Board within three days after election day. The Board shall decide within seven days after the appeal is perfected whether the voter was qualified to vote. If the appeal is denied, the appellant may within three days of such denial appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the Board decides that the voter was qualified to vote, the word "challenged" shall be stricken from the voter's ballot and the ballot shall be treated as if it had not been challenged.

(f) * * *

(g) No person shall vote more than once in any election, nor shall any person vote in an election held by a political party other than that of which he has declared himself a member.

(h) * * *

(Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(14, 15, 16, 17).)

CHANGE OF NAME

Act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 87–883, section 6, eff. Jan. 1, 1963, changed the name of the Municipal Court of Appeals for the District of Columbia to "District of Columbia Court of Appeals."

AMENDMENTS

1961—Section 1(14), act Oct. 4, 1961, struck out the second sentence in subsection (a). The struck sentence read as follows: "Voting may be by paper ballot or voting machine."

Section 1(15) of the same act, amended subsection (b) by striking the word "ballot" and inserting in lieu thereof the word "vote" in the first sentence and by inserting at the end thereof the new sentence as above set out.

Section 1(16) of the same act amended subsection (e) by changing "municipal court of the District" to read "municipal court for the District".

Section 1(17) of the same act, amended subsection (g) to read as above set out. The original wording of subsection (g) is set out in the main volume of the Code.

§ 1–1110. Dates for holding elections—Voting Hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

(a)(1) The elections of the officials referred to in clauses (1), (2), and (3) of section 1–1101 and of officials designated pursuant to clause (4) of such section shall be held on the first Tuesday in May of each presidential election year. Any such election shall be conducted by the Board in conformity with the provisions of this chapter. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election days.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President of the United States. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election day. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(b) Candidates receiving the highest number of votes in such elections shall be declared the winners.

(c) In the case of a tie, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following the election, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee: *Provided,* That such successor shall have the qualifications required by this Act for such office. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(18, 19, 20).)

AMENDMENTS

1961—Section 1(18), act Oct. 4, 1961, amended subsection (a) by inserting the number (1) immediately after (a) and by the matter set out as par. (2) in said subsection.

Section 1(19) of the same act amended subsection (b) by changing "said election" to read "such elections."

Section 1(20) of the same act amended subsection (d) by striking the word "dies" and inserting in lieu thereof "dies, resigns, or becomes unable to serve" and by striking the words "local committee" at the end of the subsection and inserting in lieu thereof "party committee: *Provided,* That such successor shall have the qualifications required by this chapter for such office."

CROSS REFERENCE

Sale of alcoholic beverages on election days, see § 25–107.

§ 1–1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.

(a) There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such amounts as may be necessary to carry out the purposes of this chapter.

(b) Subject to the penalties provided in this chapter, a candidate for elector of President and Vice President, national committeeman, national committeewoman, delegate, or alternate, in his campaign for election, shall not make expenditures in excess of $2,500.

(c) No independent committee or party committee shall receive contributions aggregating more than $100,000, or make expenditures aggregating more than $100,000 for any campaign covered by this chapter.

(d) No person shall, directly or indirectly, make contributions in an aggregate amount in excess of

$5,000 in connection with any campaign for election of any elector, national committeeman, national committeewoman, delegate, or alternate.

(e) Every candidate and independent committee or party committee shall, within ten days after an election, file with the Board of Elections an itemized statement, subscribed and sworn to by the candidate or committee treasurer, as the case may be, setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts and obligations incurred by the candidate or independent committee or party committee with regard to such election, and specify the balance, if any, of such election funds remaining in his or their hands. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 13; Oct. 14, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(21, 22, 23).)

AMENDMENTS

1961—Section 1(21), act Oct. 4, 1961, amended subsection (b) by inserting after the words "a candidate for" the words, "elector of President and Vice President,".

Section 1(22) of the same act amended subsection (d) by striking "any national committeeman" and inserting in lieu thereof "any elector, national committeeman".

Section 1(23) of the same act, amended subsection (e) by striking from the first sentence the words "the election" and inserting in lieu thereof "an election".

§ 1–1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his place of residence or his voting privilege in any other part of the United States, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than $500 or be imprisoned not more than ninety days, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 1(24).)

AMENDMENT

1961—Section 1(24), act Oct. 4, 1961, amended the section by striking from the first sentence "if employed in the counting of votes in such elections" and inserting in lieu thereof "if employed in the counting of votes in any election held pursuant to this chapter knowingly" and by inserting the word "knowingly" before the words "make any expenditure".

Chapter 14.—NATIONAL CAPITAL REGION TRANSPORTATION

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

Sec.
1–1410a. Consent of Congress given to make certain amendments to mass transportation compact.

SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

§ 1–1407. Functions, duties, and powers.

(a) * * *

* * * * *

(11) Repealed October 4, 1961, 75 Stat. 787, Pub. L. 87–367, § 103(4).

SAVINGS PROVISIONS

Section 104 of act Oct. 4, 1961, Pub. L. 87–367, provided:

"(a) The changes in existing law made by section * * * 103 of this title [Repealing subsection (a)(11)] shall not affect any position existing immediately prior to the effective date of such changes in existing law, the compensation attached to such position, and any incumbent thereof, his appointment thereto, and his entitlement to receive the compensation attached thereto, until appropriate action is taken in accordance with this title.

"(b) Positions in grades 16, 17, or 18, as the case may be, of the General Schedule of the Classification Act of 1949, as amended, immediately prior to the effective date of this section [Oct. 4, 1961], shall remain, on and after such effective date, in their respective grades, until appropriate action is taken under section 505 of the Classification Act of 1949 as in effect on and after such effective date."

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

§ 1–1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

NOTES TO DECISIONS

1. **Authority of Commission**

Washington Metropolitan Area Transit Commission, to which carrier applied for certificate while making simultaneous motion to dismiss on ground that its operation was exempt from regulation, could not, upon determining that operation was not exempt, grant motion and thus compel carrier to pursue application, since carrier might not wish to seek regulated operation. *Montgomery Charter Service Inc.* v. *The Washington Metropolitan Area Transit Commission et al.* (1962, 302 F. 2d 906, 112 U.S. App. D.C. 321).

Washington Metropolitan Area Transit Commission could not order carrier, which was applying for certificate, to cease unauthorized operations, absent evidence in record that carrier was engaged in such operations, although record contained reference to claimed admission by carrier's president and counsel. *Id.*

§ 1–1410a. Consent of Congress given to make certain amendments to mass transportation compact.

The consent of Congress is hereby given to the State of Maryland and the Commonwealth of Virginia to effectuate the foregoing [1] amendments to the compact, and the Commissioners of the District of Columbia are authorized and directed to effectuate said amendments on behalf of the United States for the District of Columbia. (Oct. 9, 1962, 76 Stat. 765, Pub. L. 87–767, § 1.)

[1] The amendments are set out as a note to this section.

CONGRESSIONAL RESERVATION

Section 3, act of Oct. 9, 1962, Pub. L. 87–767, provides as follows: "The right of Congress to alter, amend, or repeal this Act is hereby expressly reserved."

PREAMBLE TO ACT OCT. 9, 1962, PUB. L. 87–767.

Whereas the State of Maryland and the Commonwealth of Virginia have entered into a compact, known as the Washington Metropolitan Area Transit Regulation Compact, hereinafter called compact, creating the Washington Metropolitan Area Transit Commission, hereinafter called Commission; and

Whereas Congress, by Public Law 86–794 (74 Stat. 1031) [§ 1–1410], consented to the entry into the compact by the State of Maryland and the Commonwealth of Virginia, and authorized and directed the Board of Commissioners of the District of Columbia to enter into and execute the compact on behalf of the United States for the District of Columbia; and

Whereas the Commission has recommended specific amendments to the compact, to wit:

(1) To include within the Washington metropolitan area transit district the Dulles International Airport and all cities which lie within the metropolitan district;

(2) To exempt from the Commission's jurisdiction transportation performed by a carrier whose only transportation is between points outside the metropolitan district and points inside the metropolitan district;

(3) To clarify the Commission's jurisdiction over interstate taxicab operations;

(4) To provide that the annual reports of the Commission be submitted on a fiscal year basis; and

Whereas the State of Maryland and the Commonwealth of Virginia have by legislation (chapter 114, Acts of Maryland General Assembly, 1962; and chapter 67, Acts of Virginia General Assembly, 1962) adopted identical amendments to the compact, to become effective upon consent of Congress, by which article I, and sections 1 and 24 of article XII, respectively, of the compact are amended to read as follows: [*Amendments To Compact Authorized By Act Oct. 9, 1962.*]

ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the other boundaries of the combined area of said counties, cities and airport.

ARTICLE XII

Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

(1) transportation by water;

(2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;

(3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

(5) transportation performed by a common carrier by railroad subject to Part I of the Interstate Commerce Act, as amended.

(b) The provisions of this Title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this Title II be construed to infringe the exercise of any power or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing a bona fide taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

Annual Report of the Commission

24. The Commission shall make an annual report for each fiscal year ending June thirtieth, to the Governor of Virginia and the Governor of Maryland, and to the Board of Commissioners of the District of Columbia as soon as practicable after June thirtieth, but no later than the 1st day of January of each year, which shall contain, in addition to a report of the work performed under this Act, such other information and recommendations concerning passenger transportation within the Metropolitan District, as the Commission deems advisable.

§ 1–1414. Repealed. Oct. 5, 1962, 76 Stat. 765. Pub. L. 87–767, § 2.

Section act Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86–794, § 5, provided that the consent of Congress to the mass transportation compact was conditioned on section 1(a)(4) of article XII of the compact being amended, in the respects therein specified, within three years from Sept. 15, 1960. See amendments to compact set out as a note to § 1–1410a.

TITLE 1.—ADMINISTRATION, APPENDIX

REORGANIZATION PLAN AND ORDERS FOR DISTRICT OF COLUMBIA

REORGANIZATION PLAN NO. 5 OF 1952

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 1, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949. [Reorganization Act of 1949, 63 Stat. 203 as amended, is set forth in sections 133z to 133z–15 of Title 5, United States Code.]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

* * * * *

(b) The Board of Commissioners shall not provide for the performance by any member of the Board of Commissioners, or by any other officer, employee, or agency of: (1) any function vested in the said Board by Act of Congress with respect to making and adopting regulations except those pertaining to the administration of or procedure before any agency of the Government of the District of Columbia; (2) the function of approving any contract in excess of $50,000; (3) the function of appointing or removing the head of any agency responsible directly to the Board of Commissioners; or (4) the function of approving the budget for the District of Columbia.

(Subsec. (b) amended by Act Oct. 11, 1962, 76 Stat. 910, Pub. L. 87–802, § 1, by striking $25,000 and inserting in lieu $50,000.)

REORGANIZATION ORDER NO. 2.—CITIZENS' ADVISORY COUNCIL

[Amended and redesignated as Org. Ord. No. 136.]

REORGANIZATION ORDER NO. 8.—MANAGEMENT OFFICE

Reorg. Ord. No. 8, C.O. 302,970.a, Sept. 25, 1952, as amended Aug. 24, 1961, ordered that:

1. * * *

* * * * *

(c) The Management Office is responsible for planning, developing, directing, and coordinating a program for the effective use of automatic data processing systems and equipment throughout the entire District of Columbia Government.

* * * * *

REORGANIZATION ORDER NO. 19.—INTERNAL AUDIT OFFICE

Reorg. Ord. No. 19, C.O. 302,970D, C.O. 302,853/14, Nov. 10, 1952, as amended Aug. 28, 1958, and June 5, 1962, ordered that:

* * * * *

PART IV

Functions.—The responsibilities of the Internal Audit shall be to:

1–6. * * *

7. Acting for the Director of General Administration, coordinates with District departments concerned, all audit reports submitted by the General Accounting Office in their review of District Government activities.

REORGANIZATION ORDER NO. 28.—DEPARTMENT OF SANITARY ENGINEERING

Reorg. Ord. No. 28, C.O. 302,970.H, C.O. 302,853/14, Apr. 3, 1953, as amended Aug. 4, 1953, Jan. 31, 1956, Jan. 17, 1961, Oct. 17, 1961, Nov. 27, 1962, and Apr. 7, 1964, ordered that:

* * * * *

PART II

Purpose.—* * *

* * * * *

Operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial, and other related services.

* * * * *

PART IV

Functions.—A. *Office of the Director, Department of Sanitary Engineering:*

* * * * *

6. Orders all construction projects involving both assessable and non-assessable facilities within the framework of the programs for which he is responsible to the Commissioners.

* * * * *

E. *Sewer Operations Division.*

1. Plans programs and policies, and is responsible for the operation, maintenance, and making of minor repairs to the sewer facilities of the District of Columbia, including the treatment of all sewage and liquid waste delivered to the District of Columbia Water Pollution Control Plant from the sewer system.

REORGANIZATION ORDER NO. 29.—PROCUREMENT OFFICE

Reorg. Ord. No. 29, C.O. 302, 970.I, & C.O. 302,853/14, Apr. 14, 1953, as amended June 4, 1953, Sept. 17, 1953, Feb. 2, 1954, June 1, 1954, Mar. 27, 1956, Oct. 30, 1956, June 24, 1958, Dec. 22, 1958, July 28, 1959, July 12, 1960, Mar. 9, 1961, Oct. 30, 1962, Feb. 8, 1963, Mar. 13, 1963, Mar. 26, 1963, and Aug. 13, 1964, ordered that:

* * * * *

PART VI

Appointment of contracting officers.—

* * * * *

(b) The employees occupying the following positions are appointed Alternate Contracting Officers, and each is authorized to exercise all the powers vested by paragraph (c) of this Part in the Contracting Officer for whom he is named Alternate, subject to all limitations upon the powers of such Contracting Officer, during the unavailability of such Contracting Officer and at such times and for such purposes as such Contracting Officer may designate in writing and also from the date of separation of such Contracting Officer from the services of the District of Columbia and until the successor to such Contracting Officer is appointed:

(1) Deputy Director of Buildings and Grounds, and Chief, Office of Design and Engineering, as Alternates for Director of Buildings and Grounds, D.C., but said Chief, Office of Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Buildings and Grounds and then only as specifically designated in writing.

(2) Deputy Director of Highways and Traffic, and Deputy Director of Design, Engineering and Research as alternates for Director of Highways and Traffic, but said Deputy Director for Design, Engineering and Research shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Highways and Traffic and then only as specifically designated in writing.

(3) Deputy Director of Sanitary Engineering, and Superintendent, Office of Planning, Design and Engi-

neering as alternates for Director of Sanitary Engineering, D.C., but said Superintendent, Office of Planning, Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Sanitary Engineering and then only as specifically designated in writing.

(4) Assistant Chief, Real Property Division as alternate for the Chief, Real Property Division, Administrative Services Office.

PART VII

Contract Appeals Board, D.C.—

* * * * *

(b) The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and appeals from actions by Contracting Officers, including the Procurement Officer, where the contracting officer is unable to satisfy the contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Board of Commissioners may from time to time order. Upon request of the contractor or of the contracting officer, and with the consent of the other, the subject matter of an appeal shall be remanded to the contracting officer who shall thereupon reconsider his appealed decision, and upon such remand the appeal shall be dismissed. The decision of the Contract Appeals Board in every case shall be final subject to the limitations of Section 3(b)(2) of Reorganization Plan No. 5 of 1952.

* * * * *

PART IX

Authority to determine fair market prices for products and services of the industrial enterprises of the D.C. Workhouse and Reformatory.—(a) Pursuant to the provisions of Section 3(a) of Reorganization Plan No. 5 of 1952, effective July 1, 1952, authority is hereby delegated, effective August 12, 1952, to the Director of Corrections, D.C., in collaboration with the Procurement Officer, D.C., to determine, on and after this date, the fair market prices to be charged by the Department of Corrections for products and services of the Industrial Enterprises of the D.C. Workhouse and Reformatory. Should the Director of Corrections and the Procurement Officer fail to agree as to the fair market price of any such product or services, their respective recommendations, with reasons therefor, shall be submitted to the Board of Commissioners, D.C., for final determination.

(b) Commissioners' Order P.O. 4315 dated August 12, 1952, is hereby superseded.

(c) The Director, Department of Corrections, is hereby appointed a contracting officer for the District of Columbia subject to all appropriate laws, rules and regulations and such instructions as the Commissioners may, from time to time, give: *Provided,* That his authority as contracting officer is limited to the execution and administration of contracts with the various departments of the District of Columbia and the Federal Government for the sale of goods and services produced by the industries division of the Department of Corrections and contracts with any of the states of the United States or any political subdivision of such state for the sale of gun mountings and carriages for guns for use at historic sites and for museum display purposes. The Director, Department of Corrections, is authorized to redelegate to other officials of the Department of Corrections the contracting officer authority contained herein, provided such redelegation be in writing and filed in the Procurement Office and the Accounting Office.

* * * * *

Order No. 2070, dated Oct. 30, 1962, makes the following amendments:

1. The figures $25,000 are changed to $50,000 in Part IV(b)(1), Part V(b) and Part VI(c)(1).

2. The figures $5,000 are changed to $10,000 in Part IV(b)(2) and Part VI(c)(2).

REORGANIZATION ORDER NO. 31.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Reorg. Ord. No. 31, C.O. 274,993, C.O. 302,853/14, C.O. 302,970.C, P.D. 01.9542, Apr. 30, 1953, as amended July 20, 1954, June 28, 1955, Sept. 5, 1957, Nov. 22, 1960, and June 21, 1962, ordered that:

* * * * *

PART IX

* * * * *

In making such findings of fact the Board shall consider the written opinion submitted to it by the Board of Police and Fire Surgeons concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, together with all records and testimony of the Board of Police and Fire Surgeons relating to such member, and such records and testimony of any other person bearing on the matter before the Police and Firemen's Retirement and Relief Board.

The authority set forth in subsection "(i)" of the Policemen and Firemen's Retirement and Disability Act (P.L. 85–157; sec. 4–529, D.C. Code, 1961 ed.) to express a judgment as to the disability of a member from performing further duty in his department is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board.

REORGANIZATION ORDER NO. 34.—DEPARTMENT OF CORRECTIONS

Reorg. Ord. No. 34, C.O. 302,089, C.O. 302,853/14, May 28, 1953, as amended Dec. 10, 1953, Aug. 12, 1954, May 17, 1956, July 14, 1960, May 4, 1961, and Apr. 18, 1963, ordered that:

* * * * *

PART IV

* * * * *

K. *Health Division.*—Provides for the operation of a public health program for the inmates confined in the institutions, including provision for their medical, dental, and nursing care. Insures that the medical, dental, and nursing programs of the Department of Corrections are in conformance with the overall public health programs of the Department of Public Health, as far as practicable in a prison system.

L. *Personnel Division.*—Plans, directs, coordinates, and administers, under established administrative and penological policies, a comprehensive program of personnel operations and activities for all employees of the Department.

M. *Youth Center Division.*—Operate an institution for the detention of male prisoners committed under the Federal Youth Corrections Act, and for other male prisoners sentenced under other penalty provisions, who are considered by the Director of the Department of Corrections to be suitable for confinement therein, and for such other offenders as may be committed by the Courts for diagnosis and study, prior to further Court action, including provision for custody, diagnostic study, rehabilitation, care, discipline and instruction of such persons.

REORGANIZATION ORDER NO. 35.—ALCOHOLIC BEVERAGE CONTROL BOARD

Reorg. Ord. No. 35, G.F. 25–100, C.O. 302,853/14, June 16, 1953, ordered that:

PART I

Alcoholic Beverage Control Board.—A. There is established, under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members who shall be appointed by the Board of Commissioners, and which shall be headed by a Chairman designated by the Board of Commissioners from among the three members. All appointments shall be for terms of four years, except such appointments as may be made for the remainder of unexpired terms. A quorum shall consist of any two members. Each member of the Alcoholic Beverage Control Board shall be of good moral character, shall have resided in the District of Columbia for at least three years immediately preceding his appointment, and shall maintain residence in the District of Columbia during the term for which he was appointed. At least one member of the Board shall be a member of the bar of the United States District Court for the District of Columbia. No person shall be appointed as a

member of such Board who at any time during the two-year period immediately preceding such appointment was an employee of such Board.

REORGANIZATION ORDER NO. 38.—FIRE DEPARTMENT

Reorg. Ord. No. 38, L. S. 3089–B, June 18, 1953, as amended Aug. 27, 1957, and Oct. 17, 1961, ordered that:

PART I

Fire Department.—A. * * *

* * * * *

4. Operation and maintenance of special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services, except Fire Alarm Headquarters which is operated and maintained by the Department of Buildings and Grounds pursuant to Reorganization Order No. 42, as amended.

* * * * *

REORGANIZATION ORDER NO. 41.—OFFICE OF THE SECRETARY

Reorg. Ord. No. 41, L.S. 4158–B, June 23, 1953, as amended Feb. 4, 1955, Jan. 31, 1956, May 3, 1956, and June 23, 1964, ordered that:

* * * * *

PART IV

Functions.— * * *

7. Is responsible for the publication, storage, sale and distribution of all codes, maps, regulations, and amendments thereto, including accountability for the D.C. Publications Fund, affecting the general public and for the maintenance of such codes, maps, regulations, and amendments thereto, in a form readily accessible to the public.

* * * * *

REORGANIZATION ORDER NO. 42.—DEPARTMENT OF BUILDINGS AND GROUNDS

Reorg. Ord. No. 42. L. S. 4159–B, June 23, 1953, as amended Aug. 11, 1954, Nov. 23, 1954, Jan. 31, 1956, Apr. 24, 1956, Feb. 7, 1961, Oct. 17, 1961, and Jan. 3, 1963, ordered that:

* * * * *

PART III

Organization.—

* * * * *

6. Buildings Management Division.

PART IV

* * * * *

F. *Buildings Management Division:*

1. Operates and maintains the following District Government buildings and facilities, including the maintenance of adjacent grounds under the jurisdiction of the District of Columbia Government, and the providing of necessary protective, elevator, custodial, and other related services:

Name of building	*Multiple-use*	*Special-use*
1. Barret School		X
2. Comfort Station No. 2		X
3. Comfort Station No. 3		X
4. Corcoran School		X
5. D.C. Morgue		X
6. District Building	X	
7. East Administration Building	X	
8. Fire Alarm Headquarters		X
9. Force School Building	X	
10. Ford Building	X	
11. Juvenile Court		X
12. May Building	X	
13. Municipal Court (Civil Division)		X
14. Municipal Court (Criminal Div.)		X
15. National Guard Armory [1]	X	
16. New Cent. Library (499 Pennsylvania Avenue)	X	
17. Recorder of Deeds		X
18. Southwest Health Center		X
19. Warehouse (22 Adams Place, NE.)	[2] X	
20. 450 Main Avenue, SW.		X

[1] Limited to the performance of maintenance and repair activities pursuant to the provisions of the act approved June 4, 1948, 62 Stat. 339; section 2–1703, D.C. Code, 1951.

[2] Operates and maintains the Warehouse, Shops, and Records Center facilities at 22 Adams Place, NE., on a reimburseable basis for such part of said facilities for which funds are not allotted to the Department of Buildings and grounds.

* * * * *

REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

Reorg. Ord. No. 43, G. F. No. 36–000, June 23, 1953, as amended Aug. 28, 1962, ordered that:

* * * * *

PART VIII

There is delegated to the Superintendent of Insurance the function, now vested in the Board of Commissioners by the Act of May 17, 1932 (47 Stat. 158, ch. 189; sec. 35–204, D.C. Code, 1961 ed.), of granting or denying to insurance companies permission to remove from the District of Columbia the principal office, books, records, and files (except as set forth in paragraph 2 of this Part) of such companies.

2. The function delegated by paragraph 1 of this Part does not include authority to approve or permit the removal from the District of the principal office or stock records of any domestic life insurance company organized or reincorporated under the provisions of the 1934 Life Insurance Act (June 19, 1934, 48 Stat. 1143, ch. 672).

3. The function delegated by this Part may not be redelegated to other officials or employees of the Department of Insurance, and is subject to withdrawal or modification at any time.

REORGANIZATION ORDER NO. 46.—METROPOLITAN POLICE DEPARTMENT

Reorg. Ord. No. 46, L.S. 4236–B, June 26, 1953, as amended May 17, 1955, Oct. 20, 1955, Jan. 31, 1956, Oct. 17, 1961, Feb. 6, 1962, and Apr. 6, 1962, ordered that:

* * * * *

PART III

Organization.— * * *

12. Internal Investigation Unit.

PART IV

Functions.—A. *Office of the Chief of Police.*

1–5. * * *

6. Acts as the agent of the Director, Department of Motor Vehicles, for the service of notices suspending or revoking operators' permits and privileges and stamping on operators' permits issued by the District notations that such notices have been served.

H. *Chief Clerk's Section:*

1–3. * * *

4. Prepares all statistical reports requested by the Federal Bureau of Investigation, National Safety Council, and other agencies.

* * * * *

J. *Special Services Section:*

1–5. * * *

6. Deleted by order dated Apr. 6, 1962.

K. *Uniforms and Equipment Section:*

* * * * *

2. Operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services.

* * * * *

L. *Internal Investigations Unit:*

As directed by the Chief of Police, advises, consults with, and provides investigative assistance to other units of the department on serious or complex personnel problems; investigates cases involving alleged violations of the law by members of the department, whether arising from reports made by officials and members of the department or from the complaints of other persons; investigates, or reviews investigations of cases involving infractions of the rules of discipline or other matters; makes critical examinations of all areas of police activities wherein may lie a threat to the integrity or morale of the department.

REORGANIZATION ORDER NO. 47.—BOARD OF POLICE AND FIRE SURGEONS

Reorg. Ord. No. 47, L.S. 4237–B, June 26, 1953, as amended Oct. 16, 1958, and June 21, 1962, ordered that:

PART I

Board of Police and Fire Surgeons.—A. The existing Board of Police and Fire Surgeons including the Office of the Chairman thereof, is hereby reconstituted, with the same name and with the same functions now performed, including the powers, duties, and authorities of all members, officers, and employees assigned thereto: *Provided,* That in all cases involving retirement or involuntary separation from service pursuant to the Policemen and Firemen's Retirement and Disability Act (P.L. 85–157; sec. 4–526 through 4–529, D.C. Code, 1961 edition (subsection (f), Retirement for Disability Not Incurred in Line of Duty; subsection (g), Retirement for Disability Incurred While Performing Duty; subsection (h), Optional Retirement; and subsection (i), Involuntary Separation)), the duty of the Board of Police and Fire Surgeons shall be limited to that of submitting in writing to the Police and Firemen's Retirement and Relief Board its opinion concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, but any member of the Board of Police and Fire Surgeons, and any other person, whose report of the facts or examination of the member formed any part of the basis of such opinion of the Board of Police and Fire Surgeons shall, when so requested by any member of the Police and Firemen's Retirement and Relief Board, testify thereon before the Retirement and Relief Board with respect thereto and produce before such Board all the records and evidence before, or in the files of, the Board of Police and Fire Surgeons or any such other person concerning the member whose retirement or separation is sought, and such submission and all such records and evidence of the Board of Police and Fire Surgeons and of any such other person shall be considered by the Police and Firemen's Retirement and Relief Board: *Provided further,* That under the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952, as confirmed by the second sentence of subsection "(q)" of the Policemen and Firemen's Retirement and Disability Act, the authority lodged in the Board of Police and Fire Surgeons by subsection "(i)" of said Act and by virtue of Reorganization Order No. 47 prior to this amendment, to express a judgment as to the disability of a member from performing further duty in his department, is hereby withdrawn from said Board of Police and Fire Surgeons, and such authority is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board, established pursuant to Reorganization Order No. 31, as amended.

* * * * *

REORGANIZATION ORDER NO. 49.—OFFICE OF CIVIL DEFENSE

Reorg. Ord. No. 49, G. F. No. 4–010, June 26, 1953, as amended November 10, 1953, Aug. 26, 1958, and Aug. 7, 1962, ordered that:

* * * * *

PART III

* * * * *

F. The Director of Civil Defense is hereby designated Emergency Planning Director for D.C.

REORGANIZATION ORDER NO. 52.—DISTRICT OF COLUMBIA POUND

Combined with reorganization order 57, amended and redesignated as Organization Order No. 141, dated Feb. 11, 1964, and effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

Reorg. Ord. No. 55, L. S. 4263–B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, Dec. 4, 1962, and May 12, 1964, ordered that:

* * * * *

PART III

* * * * *

A. *Office of the Director.*—

1. Develops and proposes to the Board of Commissioners major policies and procedures, regulations and revisions thereto, on licensing, permit and certificate issuance, inspection, and related regulatory activities within the purview of the Department's functions, including the issuance of collateral notices in the enforcement of orders for compliance with applicable codes, regulations and statutes administered by the Department.

* * * * *

D. *Inspection Division.*

* * * * *

9. Conducts inspections necessary to provide adequate safeguards to the public safety and health; evaluates the effectiveness of the existing regulations pertaining to minimizing the contaminants polluting the air and proposes changes in regulations deemed necessary to achieve the overall air pollution control objectives.

* * * * *

E. *License and Permit Division.*

* * * * *

6. In those instances in which an appeal is made to the Board of Appeals and Review, except where only a determination by the Department of Public Health is in question, the case will be reviewed by the Department Director or his designee before being submitted to the Board of Appeals and Review. Cases forwarded to the Board of Appeals and Review shall be fully documented so that the Board may be apprised of what has transpired prior to the appeals action, as well as the basis for the denial or proposed suspension or revocation of the license, permit, or certificate. Based upon the decision of the Board of Appeals and Review, performs the operating functions essential to denying, revoking, suspending, or restoring the license, permit, or certificate, as the case may be.

REORGANIZATION ORDER NO. 57.—DEPARTMENT OF PUBLIC HEALTH

Combined with Reorganization Order 52, amended and redesignated as Organization Order No. 141, dated and effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 58.—DEPARTMENT OF PUBLIC WELFARE

Redesignated as Organization Order No. 140 and amended as therein set out, Feb. 11, 1964, effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 59.—BOARDS, COMMISSIONS AND COMMITTEE

Reorg. Ord No. 59, L. S. 4266–B, June 30, 1953, as amended July 17, 1953, Sept. 15, 1953, Dec. 10, 1953, June 17, 1954, June 27, 1957, June 24, 1958, July 29, 1958, Aug. 25, 1959, Jan. 26, 1960, Aug. 9, 1960, Mar. 21, 1961, May 25, 1961, Sept. 12, 1961, Feb. 20, 1962, Feb. 12, 1963, Mar. 13, 1963, Apr. 16, 1963, Aug. 5, 1963, Sept. 19, 1963, Oct. 10, 1963, Oct. 17, 1963, and Jan. 21, 1964, ordered that:

PART I

Department of Occupations and Professions.—

* * * * *

Physical Therapists Examining Board.

* * * * *

PART IV

Functions.—

* * * * *

B. *Office of the Director.*

* * * * *

5. Maintains a register of all persons registered as physical therapists, and a register of approved schools of physical therapy, pursuant to the Physical Therapists Practice Act, Public Law 87–280, 75 Stat. 578.

* * * * *

PART V

* * * * *

C. Qualification requirements shall be determined and officers shall be chosen in accordance with the statutes and regulations applicable to the boards, commissions, and committee having the same or similar names prior to their abolition by the Board of Commissioners on June 30, 1953, except that any person shall be eligible for appointment upon the Board of Podiatry Examiners who is a citizen of the United States and who has been for five years next preceding his appointment in the active and reputable practice of podiatry in the District of Columbia, and except that any person shall be eligible for appointment upon the Board of Dental Examiners who is a citizen of the United States and who has been for five years next preceding his appointment, both a resident of the Washington Metropolitan Area, as defined in the National Capital Planning Act of 1952, as amended, and in the active and reputable practice of dentistry in the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Board of Barber Examiners as they determine is in the best interest of the District Government, either upon the recommendations of interested groups or individuals, or without such recommendations, and with the further exception that in making appointments of members of the Board of Podiatry Examiners the Commissioners shall not be restricted to nominations submitted to them or to the membership of any particular group or organization but shall appoint to said Board such persons as they determine will be in the best interests of the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Real Estate Commission as they determine is in the best interests of the District of Columbia. The Steam and Other Operating Engineers' Board shall be composed of three members, two of whom are practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Boiler Inspector for the District of Columbia; and three alternates, two of whom shall be practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Assistant Chief, Smoke and Boiler Section, Department of Licenses and Inspections. The Commission on Licensure To Practice the Healing Art in the District of Columbia shall be composed of the President of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the Corporation Counsel of the District of Columbia, the Superintendent of Public Schools of the District of Columbia, and the Director of Public Health of the District of Columbia, each ex officio.

The District of Columbia Board of Cosmetology shall be composed of six members appointed by the Board of Commissioners. Each member of the Board shall be at least twenty-five years of age, shall have had at least five years' practical experience in the practice of cosmetology, shall be a citizen of the United States and a resident of the District of Columbia and shall be in the active and reputable practice of cosmetology in the District of Columbia.

* * * * *

E. The Real Estate Commission of the District of Columbia shall be composed of four (4) members appointed by the Board of Commissioners. In addition thereto, the Finance Officer, D.C. (formerly the Assessor, D.C.) shall continue to serve, ex-officio, as Chairman of the Real Estate Commission, and the Chief of the Property Tax Division, Finance Office, shall serve, ex-officio, as his Alternate, but without added compensation for their services as such.

* * * * *

PART VII

* * * * *

F. The functions relative to the registration of dentists vested in the Health Officer by Section 2–309, D.C. Code, 1961 Edition, are hereby transferred to the Director of the Department of Occupations and Professions, effective immediately.

* * * * *

PART XII

Practical Nurses' Examining Board

A. *Establishment.*—Pursuant to authority contained in Section 7 of Public Law 86–708, effective July 29, 1961, there is hereby established, within the Department of Occupations and Professions, a Practical Nurses' Examining Board.

B. *Delegation of functions.*—The Practical Nurses' Examining Board is hereby delegated the technical and professional functions vested in the Commissioners by sections 8, 9, 10, 11, 12, and 14 of Public Law 86–708, including the function of making final determinations in connection with the denial, suspension or revocation of licenses and the administrative functions authorized to be performed by such sections are hereby delegated to the Director: *Provided,* That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in section 8 shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Practical Nurses' Examining Board shall be composed of seven members appointed by the Board of Commissioners. Four such members shall be graduate nurses duly registered in the District of Columbia under provisions of the Act of February 9, 1907, as amended (D.C. Code, 1951 edition, Sec. 2–401 through 2–411), and who shall have had, since graduation, at least five years of experience in the nursing service. Three such members shall be practical nurses. From and after October 26, 1961, all such practical nurse members shall be duly licensed under the provisions of Public Law 86–708. At least two practical nurse members of such Board shall be present at each meeting of the Board.

D. *Terms.*—The initial appointments to the Practical Nurses' Examining Board shall be for the following terms: one graduate nurse and one practical nurse member for one year; one graduate nurse member and one practical nurse member for two years; and two graduate nurse members and one practical nurse member for three years. Thereafter, except in those instances when appointment is made to fill an unexpired term, each member of the Practical Nurses' Examining Board shall be appointed for a term of three years or until her successor has been appointed and qualified. In the event that any vacancy should occur in the membership of the Practical Nurses' Examining Board in any manner other than by the expiration of time, the Board of Commissioners shall fill such vacancy in the usual manner, for the duration of the unexpired term.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Practical Nurses' Examining Board.

PART XIII

Physical Therapists Examining Board

A. *Establishment.*—Pursuant to authority contained in Section 6 of Public Law 87–280, there is hereby established, within the Department of Occupations and Professions, a Physical Therapists Examining Board.

B. *Delegation of functions.*—The Physical Therapists Examining Board is hereby delegated all of the technical and professional functions vested in the Board of

Commissioners by Public Law 87–280, including the function of making final determinations in connection with the denial, suspension, or revocation of registrations, and the administrative functions authorized to be performed by the Board of Commissioners in Public Law 87–280 are hereby delegated to the Director of the Department of Occupations and Professions: *Provided,* That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in Section 7 of Public Law 87–280, and the functions of establishing or changing the annual expiration date of registrations and the fixing, increasing, and decreasing of fees as provided in Sections 12 and 19 respectively of Public Law 87–280, shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Physical Therapists Examining Board shall be composed of three members appointed by the Board of Commissioners. They shall be physical therapists, with at least five years experience in physical therapy in the District of Columbia. From and after February 20, 1963, all such members shall be duly registered under the provisions of Public Law 87–280.

D. *Terms of appointment.*—Members shall hold office for 3 years, except that of the initial appointments of members following the effective date of this Order, one shall serve for one year, such term to expire February 19, 1964; one for two years, such term to expire February 19, 1965; and one for three years, such term to expire February 19, 1966. Following establishment of this Board, all provisions of Part V of this Order shall apply.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Physical Therapists Examining Board.

REORGANIZATION ORDER NO. 60.—PUBLIC HEALTH ADVISORY COUNCIL

Org. Order No. 142, rescinded Reorganization Order 60, and Organization Orders 123 and 129 and replaced them with Organization Order 142 as set out in this appendix.

ORGANIZATION ORDER NO. 101.—OFFICE OF THE RECORDER OF DEEDS

Organization Ord. No. 104, 63–197, Jan. 24, 1963, and amended Mar. 13, 1963, ordered that:

Organization Order No. 130, dated Apr. 26, 1962, relative to the Office of the Recorder of Deeds, is hereby repealed in its entirety.

That Organization Order No. 101, dated Sept. 16, 1954, as amended, relative to the Recorder of Deeds, is hereby superseded in its entirety and replaced as follows:

PART I

Delegations of authority

A. *Recording of deeds.*—Section 548 of the Act of Congress approved March 3, 1901, as amended (§ 45–701, D.C. Code 1961 edition), provides among other things that there shall be a "Recorder of Deeds of the District appointed by the Commissioners of the District of Columbia, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office . . . All of the duties and functions of the Recorder of Deeds and of officers and employees in his office shall be performed subject to the supervision and control of the Commissioners of the District."

B. *D.C. Business Corporation Act.*—The Recorder of Deeds is hereby continued as the agent of the Commissioners to perform all functions vested in the Commissioners by the District of Columbia Business Corporation Act, as amended (Title 29, Ch. 9, D.C. Code 1961 edition), except the functions of promulgating regulations and increasing or decreasing fees, which shall remain vested in the Commissioners.

The Recorder of Deeds is hereby authorized to redelegate to the Superintendent of Corporations, from time to time, any and all of the functions delegated to the Recorder of Deeds by this Part.

C. *D.C. Real Estate Deed Recordation Tax Act.*—The Recorder of Deeds is hereby continued as the agent of the Commissioners of the District for the purpose of administering, to the extent herein provided, the provisions of the District of Columbia Real Estate Deed Recordation Tax Act (Title III, Act of Congress approved Mar. 3, 1962; Pub. L. 87–408; 76 Stat. 11), namely:

(a) Receives and examines all returns required to be filed with any deed submitted for recordation. Forwards all returns to Finance Office upon completion of examination and processing.

(b) Maintains for purposes of Office of Recorder of Deeds such staff, records, and accounts as may be required or necessary in connection with the recordation of deeds and the receiving and accounting for taxes applicable to such deeds.

(c) Receives all taxes applicable to deeds presented and accepted for recordation, except such taxes as are assessed as a deficiency and collected by the Finance Office, and records the amount thereof on the deed.

(d) Except where the Finance Officer has waived as to a party to a deed the requirement for the filing of a return by such party, or has extended the time for filing of a return by a party, rejects for recordation any deed for which a return is required to be filed if such deed is not accompanied by a return in proper form, executed by all the parties to the deed.

(e) Except where the Finance Officer has extended the time for payment of the tax applicable to a deed submitted for recordation, or has accepted security for the payment of the tax, rejects for recordation any deed for which a tax is required to be paid, if the full amount of the applicable tax is not tendered with the deed.

(f) Checks returns for arithmetical accuracy in the computation of the amount of tax due. Where an arithmetical computation, as made on a return, is erroneous, may, in his discretion, recompute the tax and, upon payment of the tax as recomputed, accept for recordation the deed to which the return applies, noting on the return the action taken.

(g) Accounts for and transmits to the Finance Officer in accordance with established procedures, all taxes collected upon recordation of deeds.

(h) Except as otherwise modified pursuant to this order, performs such duties and functions and carries out such procedures relating to the recordation of deeds as are now or may hereafter be prescribed for the conduct of the Office of the Recorder of Deeds, D.C.

(i) Except as to deeds which are exempt from tax and which may be recorded without the filing of a return, refers to the Finance Officer for review when requested by him in writing, any deed for which a return is required to be filed and for which exemption from tax is claimed, and records such deed only upon notification by the Finance Officer that the deed is exempt from tax, or, if such deed is determined to be taxable, records deed only upon payment of applicable tax.

(j) Administers oaths and affirmations to parties to deeds when required in connection with a return or other document presented to him for purposes of recordation of a deed.

D. *D.C. Non-Profit Corporation Act.*—Effective February 3, 1963, the Recorder of Deeds is hereby designated the agent of the Commissioners of the District of Columbia to perform every function vested in said Commissioners by the District of Columbia Non-Profit Corporation Act, approved August 6, 1962 (Pub. L. 87–569; 76 Stat. 265).

The Recorder of Deeds is hereby authorized to redelegate to the Superintendent of Corporations, from time to time, any and all of the functions which are delegated to the Recorder of Deeds by this part.

E. *Uniform Limited Partnership Act.*—The District of Columbia Uniform Limited Partnership Act approved September 28, 1962 (Pub. L. 87–716; 76 Stat. 655) provides that the Office of the Recorder of Deeds shall serve as an office of record for the recording, filing, indexing, and handling of limited partnerships.

F. *Metropolitan Police Relief Association Act.*—The Recorder of Deeds is hereby designated the agent of the Commissioners to perform the functions vested in the Commissioners by section 13 of the Act approved July 5,

1962 (Pub. L. 87–523; 76 Stat. 135), incorporating the Metropolitan Police Relief Association of the District of Columbia.

PART II

Redelegation of authority.—With respect to the functions delegated to him by the Commissioners, as set forth in subparts B, C, D, and F, of Part I, the Recorder of Deeds shall have full authority over all such functions, including the power to redelegate such of the powers delegated to him by the Commissioners as in his judgment may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations and shall be subject to the administrative direction and control of the Commissioner to whom the Office of the Recorder of Deeds is assigned.

PART III

Organization.—There shall be established in the Office of the Recorder of Deeds as many organizational components and positions with such duties and responsibilities as the Recorder shall from time to time determine; *Provided,* That all actions establishing, altering, changing, or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration, for appropriate action pursuant to applicable Commissioners' Orders.

PART IV

Functions.—The functions of the Office of the Recorder of Deeds shall include, but not be limited to, the following in accordance with the delegations contained in Part I herein:

A. Serves as an office of record for the recording, filing and handling of all public records in the form of deeds, deeds of trust, motor vehicle liens, chattel mortgages, contracts and other instruments in writing affecting a right, title or interest in real and personal property in the District of Columbia.

B. Maintains an index to real property in the District of Columbia through which the recorded history of ownership of such property is made available to the public.

C. Serves as an office of record for the recording, filing, indexing and handling of limited partnerships in accordance with Pub. L. 87–716.

D. Performs all functions specified in subparts B and D of Part I, of this Order pertaining to the Business Corporation Act and the Non-Profit Corporation Act.

E. Performs all functions specified in subpart C of Part I of this Order pertaining to the Real Estate Deed Recordation Tax Act.

F. Files, without charge, services discharge papers for veterans of the armed forces.

G. Recommends to the Commissioners and drafts new laws and regulations and amendments to existing laws and regulations and recommends increases and decreases in fees pertaining to the functions of the Office.

H. Provides photostatic certified copies of legal documents of record for use in various Courts of law in the District of Columbia, and the several States, and foreign countries.

I. Collects all fees, license taxes, penalties, and other charges, as prescribed in or under the authority of the heretofore cited legislation, and deposits same with the D.C. Treasurer.

ORGANIZATION ORDER NO. 105.—DEPARTMENT OF MOTOR VEHICLES

Organization Ord. No. 105, 55–885, May 17, 1955, as amended June 10, 1958, Sept. 9, 1958, May 19, 1959, and Nov. 7, 1961, ordered that:

* * * * *

PART IV

* * * * *

F. *Vehicle Control Division:*

1. Plans, directs, coordinates, administers and evaluates comprehensive procedures, processes and requirements covering the titling and registration of, and issuance of owners' identification tags for motor vehicles and trailers, and, the inspection of such vehicles and trailers for mechanical safety and for the prevention of noise and air pollution.

* * * * *

ORGANIZATION ORDER NO. 107.—HACKERS' BOARD

1. That, effective as prescribed by paragraph 2 of this order, Organization Order No. 107, dated May 17, 1955, as amended Dec. 18, 1958, Apr. 5, 1960, Sept. 20, 1960, Sept. 18, 1962, Oct. 30, 1962, and Nov. 6, 1962, ordered:

PART I

The Board of Revocation and Review of Hackers' Identification Cards, established by Reorganization Order No. 54, dated June 30, 1953, as amended, shall continue to be responsible to the Board of Commissioners through the Engineer Commissioner, but shall hereafter be known as the Hackers' License Appeal Board, with the short title of Hackers' Board.

PART II

A. *Membership.*—The Hackers' Board shall consist of five (5) members, namely:

(1) An employee in the Permit Control Division, Department of Motor Vehicles, as designated from time to time by the Director, Department of Motor Vehicles, who shall be chairman;

(2) A member of the Citizens' Traffic Board (hereinafter, Traffic Board), assigned and compensated as hereinafter provided;

(3) Two attorneys designated and compensated as hereinafter provided, to be selected and assigned as required by paragraph (2) of subpart C of this Part.

(4) An Assistant Corporation Counsel, as designated from time to time by the Corporation Counsel.

B. *Quorum.*—Three members shall constitute a quorum, one of whom shall be the Assistant Corporation Counsel member and one of whom shall be one of the two attorney members from the bar associations.

C. *Designation, appointment, and assignment:*

(1)(a) The Executive Secretary of the Traffic Board shall keep the Chairman of the Hackers' Board currently advised of the names of the members of the Traffic Board who are willing to serve as members of the Hackers' Board, and the Chairman shall maintain a list of such members.

(b) The Chairman of the Hackers' Board shall assign such Traffic Board members in rotation to sit in specified cases or at specified times.

(2)(a) The President of the Bar Association of the District of Columbia and the President of the Washington Bar Association of the District of Columbia each having submitted to the President, Board of Commissioners, the names of not less than 16 members of his Association who are willing to serve as members of the Hackers' Board and whom he nominates for appointment to said Board, the President of the Board of Commissioners shall, annually, submit to the Board of Commissioners for its consideration said panels of not less than 16 names each. The Board of Commissioners shall consider such panels and shall make a selection either therefrom or otherwise of not more than 16 attorneys as members of the said Hackers' Board who shall serve until their successors are appointed and who shall be subject to removal by the Board of Commissioners. After the said appointees have taken the oath of office, the Secretary, Board of Commissioners, shall furnish to the Chairman of the Hackers' Board a list naming the attorney members appointed to said Board.

(b) The Chairman of the Hackers' Board shall assign such attorney members in rotation to sit in specified cases or at specified times.

D. *Oath and Compensation.*—The members of the Traffic Board and the attorney members appointed on nomination by the bar associations or otherwise shall be intermittent employees of the District of Columbia, shall take the oath of office prescribed for civil employees of the District of Columbia, and shall receive compensation when actually performing services as members of the Hackers' Board.

E. *Conflict of interest:*

(1) The members who are intermittent employees of the District of Columbia shall, upon taking the oath of office, file with the Director, Department of Motor Vehicles, a statement in detail of any and all private interests that such members may have relating to vehicles for hire, including, without limitation, legal or other representation, ownership, management or operation of vehicles for hire or the drivers thereof. Such statements shall be promptly amended or supplemented to reflect any change in such private interests.

(2) Upon the filing of the statement provided for in the preceding subparagraph, the member filing same shall, if such statement reflects all current conditions required to be included therein, be considered to have the written permission of the appropriate authority, as required by the last paragraph on page 10B–5 of the District of Columbia Personnel Manual, to engage in the practice or pursuit of such private interests, provided that he does not participate in the hearing, consideration or determination of any matter involving any interest, direct or indirect, contained in any such statement so filed with the Director, or properly includable in any such statement.

PART III

A. The functions and responsibilities of the Hackers' Board shall be to:

(1) Consider appeals from adverse decisions on applications for licenses submitted in accordance with the requirements of subparagraphs (e) and (j) of paragraph 31 of section 7 of the Act approved July 1, 1902, as amended (§ 47–2331 (e) and (j), D.C. Code, 1961 edition) and affirm such decisions, or approve such applications.

(2) Determine whether a complaint against an individual licensed in accordance with the requirements of subparagraphs (e) or (j) of paragraph 31 of section 7 of such Act approved July 1, 1902, as amended, justifies the suspension or revocation of such license under the authority contained in subparagraph (a) of paragraph 46 of section 7 of such Act (§ 47–2345(a), D.C. Code, 1961 edition), and, if such action be justified, suspend or revoke such license.

(3) Recommend to the Board of Commissioners changes in criteria or standards to be applied in the denial of applications submitted in accordance with the requirements of paragraphs (e) and (j) of section 47–2331 of the D.C. Code, and in the suspension or revocation of such licenses under the authority of section 47–2345(a) of the D.C. Code.

B. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act approved July 1, 1902 (32 Stat. 591; § 1–237, D.C. Code, 1961 edition), and the Board shall possess the powers vested in the Commissioners by that Act.

C. The procedures of the Board shall be in accordance with such rules as may be prescribed by the Corporation Counsel, and the said Corporation Counsel is hereby authorized to prescribe, and from time to time amend, rules governing the procedures of the Board, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to the Board.

D. The decisions of the Board pursuant to subpart A shall be final.

PART IV

The Department of Motor Vehicles shall provide the necessary administrative services for the Hackers' Board.

2. That paragraph 1 of this Order shall become effective thirty days from the date on which the Commissioners forward to the Chairman of the Hackers' Board the list of attorneys selected and appointed by them in accordance with Part II.C.(2) of Organization Order No. 107, as amended by said paragraph 1 hereof, except that, for the purpose of designating, or of selecting and qualifying, the individuals who shall become members of such Hackers' Board, Part II of Organization Order No. 107, as so amended, shall become effective immediately. After the expiration of such thirty day period, all matters then pending before the Board of Revocation and Review of Hackers' Identification Cards or on appeal from its actions shall be within the jurisdiction of the Hackers' Board which shall take such action in any such matter as it deems advisable.

[This part was amended Oct. 30, 1962, by order No. 62–2066, by striking out "15 days" and substituting "thirty days".]

ORGANIZATION ORDER NO. 108.—CITIZENS' TRAFFIC BOARD

Organization Ord. No. 108, 55–888, May 17, 1955, as amended Feb. 18, 1959, Sept. 12, 1961, Dec. 12, 1961, and Mar. 27, 1962, ordered that:

* * * * *

PART III

Composition and membership:

1. The Citizens' Traffic Board shall consist of not to exceed 25 members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners, except that during the period April 1, 1962, to April 1, 1963, the Citizens' Traffic Board shall consist of not to exceed 27 members: *Provided,* That if, during such period one or more members of such Board is or are separated therefrom by death, resignation or otherwise, such member or members may be replaced so that the membership of the Board shall not, during such period, exceed 26 if one member is so separated and shall not exceed 25 if two or more members are so separated. Members shall hold office for terms of three years, except that of the initial appointments one-third shall serve for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year. Appointments scheduled to terminate or begin on Feb. 18, 1962, shall instead terminate or begin on Apr. 1, 1962. April 1 shall subsequently be the regular date of rotation of appointments each year.

2. The Board shall solicit the participation in its activities of those individuals, firms, associations, and other groups considered by the Board qualified and willing to assist in the Board's mission. Invitations to participate in the activities of the Board and the acceptances of such invitations will be made a matter of record by the Board.

* * * * *

PART IV

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1. The Board of Commissioners shall designate the Chairman and two Vice Chairmen of the Board.

* * * * *

ORGANIZATION ORDER NO. 109.—ESTABLISHING POSITION OF ASSISTANT ENGINEER COMMISSIONER FOR URBAN RENEWAL AND ESTABLISHING AN OFFICE OF URBAN RENEWAL

Organization Ord. No. 109, 55–996, May 31, 1955, as amended Feb. 13, 1962, ordered:

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PART II

A. * * *

B. *Functions.*—* * *

1. * * *

2. * * *

3. * * *

4. * * *

5. * * *

6. Development of a Community Renewal Program which will encompass the long-range needs in the District of Columbia for urban renewal and slum prevention.

PART III

* * * * *

A. *Purpose and functions.*— * * *

1. * * *

2. * * *

3. * * *
4. * * *
5. * * *
6. Development of a Community Renewal Program which will encompass the long-range needs in the District of Columbia for urban renewal and slum prevention.

ORGANIZATION ORDER NO. 110.—COMMISSIONERS' URBAN RENEWAL COUNCIL

Rescinded by Organization Order No. 139, dated Feb. 11, 1964, effective Jan. 16, 1964.

* * * *. *

ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

Organization Ord. 112, 55–1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, Apr. 25, 1961, Mar. 15, 1962, and Dec. 4, 1962, ordered that:

PART I.—BOARD OF APPEALS AND REVIEW

A. *Establishment.*—The Board of Appeals and Review, established in Part VIII of Reorganization Order No. 55, as amended, is hereby reconstituted as described below.

B. *Purpose, composition, qualifications of members and terms of office:*

1. The Board of Appeals and Review is an administrative agency in the Government of the District of Columbia providing a final administrative remedy in those cases assigned to it.

2. The Board of Appeals and Review shall consist of twenty-two members. The Chairman and Vice Chairman of the Board shall be designated by the Commissioners, provided, however, that the Vice Chairman shall exercise the authorities of the Chairman only in the absence of said Chairman.

3. Of the twenty-two members of the Board,

(a) seven shall be full-time employees of the District of Columbia of grade GS–13 or higher, but no such member shall be an employee of the District of Columbia in either the Office of the Corporation Counsel or in the Department of Licenses and Inspections. These employees shall receive no additional compensation for work performed by virture of their appointment or service as members of the Board.

(b) fourteen shall be intermittent employees of the District of Columbia, each of whom resides in said District or owns in his own name real property therein, seven of whom shall be members of the Bar of the District of Columbia who have had at least five years experience in the active practice of law in the District of Columbia, and eight of whom shall be persons who possess, to the extent that the Commissioners may deem it necessary or desirable, insight and perspectives in the fields of architecture, construction, finance, public health, and social service, and with respect to whom the Commissioners shall take into account their qualifications, experience and community interests. These employees shall receive compensation when actually performing service as members of the Board.

4. The term of office of each member of the Board shall be three years, except that commencing May 1, 1960, the terms of two full-time and four intermittent members shall be for one (1) year from May 1, 1960, the terms of two full-time and four intermittent members shall be for two (2) years from May 1, 1960, and the terms of three full-time and seven intermittent members shall be for three years from May 1, 1960. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term each member shall continue to serve until his successor has been appointed and qualified. Members shall be appointed, and may be removed, by the Commissioners of the District of Columbia. On April 30, 1960, the terms of office and continued service of all members theretofore appointed to the Board shall terminate. No person who has served continuously for six years or more as a member of the Board as heretofore constituted or as constituted by this order shall be reappointed as a member until the expiration of one year from the end of such service.

C. *Functions.*—The Board of Appeals and Review shall consider on appeal decisions in the following types of cases, where error in such decisions is alleged by the appellants, and make a final determination sustaining, reversing, or modifying the action from which the appeal is taken.

D. *Organization.*

1. * * *
2. (a)(1). * * *

(2) The Chairman is authorized, in appeals involving the termination by operation of law of licenses issued under the authority of the regulations adopted and promulgated by Commissioners' Order of May 28, 1943 (E.D. 210583–54), and November 24, 1943 (E.D. 236470–27), known as the "Temporary Regulations", to require preliminary conferences between appellants and attorney members of the Board for the purpose of determining whether the appeals filed by such appellants state cases on which relief can be granted. To this end, the Chairman is authorized from time to time to designate attorney members of the Board who are not full-time employees of the District of Columbia to conduct conferences having for their purpose the determination of whether appellants have grounds upon which relief can be granted for contesting the acts or decisions from which they are appealing. Each attorney member so designated by the Chairman shall have authority to confer with an appellant concerning the validity of his appeal; to require the attendance of such officers or employees, or the production of such records, of the District of Columbia as may be necessary, in the discretion of the attorney member, to permit him to evaluate such appeal; to permit the appellant to amend his appeal; and to act on behalf of the Board to dismiss any appeal which, after opportunity for amendment has been given the appellant, fails in the opinion of the attorney member to state a case. Such dismissal by the attorney member shall be the final action of the Board. It shall, however, as any other final action of the Board, be subject to reconsideration by the Board, upon timely application by the appellant, in accordance with the Board's Rules of Practice and Procedure. Any attorney member of the Board who conducts a conference under the authority of this paragraph shall not, after disposing of the matter, be eligible to serve in connection with any reconsideration of the matter by the Board.

(b)(1) * * *

(2) The Chairman may, in lieu of assigning to a Hearing Committee an appeal involving the termination by operation of law of a license issued under the authority of the Temporary Regulations, refer to an attorney member of the Board designated under the authority of subparagraph (2) of the preceding paragraph (a) any such appeal which, in the opinion of the Chairman, requires or merits a conference as authorized by such subparagraph (a)(2). After such conference, the Chairman shall take such action on behalf of the Board as is necessary in the light of the action or recommendation of the attorney member conducting such conference. If such action results in the dismissal of an appeal, such dismissal shall be subject to reconsideration by the Board, upon timely application therefor by the appellant, filed in accordance with the Board's Rules of Practice and Procedure.

* * * * *

(d) * * *

* * * * *

(iii) In each case make findings of fact, conclusions of law, and a decision sustaining, reversing, or modifying the action from which the appeal is taken.

ORGANIZATION ORDER NO. 113.—PROFESSIONAL VOCATIONAL REHABILITATION ADVISORY COUNCIL

[Rescinded by Order No. 62–1959, Oct. 11, 1962.]

ORGANIZATION ORDER NO. 114.—GENERAL VOCATIONAL REHABILITATION ADVISORY COUNCIL

[Rescinded by Order No. 62–1960, Oct. 11, 1962.]

ORGANIZATION ORDER NO. 116.—INTER-DEPARTMENTAL STATISTICAL COMMITTEE

Organization Ord. 116, 56–1399, July 17, 1956, ordered that:

* * * * *

The above matter is set out in this supplement to correct the date "July 17, 1958" which appears in the main volume as "July 17, 1956".

ORGANIZATION ORDER NO. 119.—EMERGENCY AMBULANCE SERVICE COMMITTEE

Organization Ord. No. 119, 57–1669, Aug. 27, 1957, as amended June 23, 1959, May 21, 1963, and Sept. 9, 1964, ordered that:

* * * * *

PART III

Composition.—The following departments and agencies of the District Government shall designate one representative each to serve on the Emergency Ambulance Service Advisory Committee; this representative shall have the authority to speak for his department or agency:

Fire Department.
Police Department.
Office of the Coroner.
Department of Public Health.
Board of Police and Fire Surgeons.

Each private voluntary hospital maintaining one or more ambulances in the Emergency Ambulance Service may designate one representative to the Committee. The Public Health Advisory Council, Freedmen's Hospital, The Washington Hospital Center, the D.C. Medical Association, and the Medico-Chirurgical Society of D.C., Children's Hospital, Providence Hospital, Hadley Memorial Hospital, and Georgetown University Hospital each may designate one representative to the Committee. Such other organizations as the Commissioners admit to membership on the Committee may designate one representative each.

Each private voluntary hospital maintaining one or more ambulances in the Emergency Ambulance Service may designate one representative to the Committee. The Public Health Advisory Council, Freedmen's Hospital, the Washington Hospital Center, the D.C. Medical Association, and the Medico-Chirurgical Society of D.C. each may designate one representative to the Committee. Such other organizations as the Commissioners admit to membership on the Committee may designate one representative each.

Organizations designating representatives to the Committee as stated above shall also designate alternate members to serve in the absence of the regular members.

Committee members and alternates shall serve without compensation and until the organization which they represent notifies the Committee Chairman of the appointment of their successor. It is the intent of the Commissioners that District departments and agencies and non-governmental organizations entitled to membership on the Committee shall keep current their designation of their representatives and alternates on this Committee.

* * * * *

PART V

Organization.—The Emergency Ambulance Service Advisory Committee shall determine its own organization, including the establishment of subcommittees, establish its own rules of procedure, and designate its officers except for the position of Chairman. Secretarial service and administrative support shall be provided by the Fire Department. All meetings of the Committee shall be at the call of the Chairman, Committee members shall have the right to request, through the Chairman, a meeting of the Committee at any time when the organization which they represent has a matter which it desires to bring to the attention of the Committee.

ORGANIZATION ORDER NO. 121.—DEPARTMENT OF GENERAL ADMINISTRATION, FINANCE OFFICE

Organization Ord. No. 121, 57–3276, Dec. 12, 1957, as amended Apr. 24, 1956, Nov. 13, 1958, Oct. 25, 1960, Aug. 24, 1961, Apr. 26, 1962, Sept. 25, 1963, and Aug. 11, 1964, ordered:

* * * * *

PART III

Organization.—A. There are hereby established in the Finance Office, under the supervision and direction of the Finance Officer, the following organizational components: Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Enforcement Division, Accounting Division, and Data Processing Division.

B. There shall be established in the Finance Office such other organizational components subordinate to those established in this Order and such positions, with such duties and titles as the Finance Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

* * * * *

A. *Office of the Finance Officer:*

* * * * *

13. Except as to such duties and functions as are performed in connection therewith by the Recorder of Deeds, D.C., administers, as agent of the Commissioners, the provisions of Title III of Public Law 87–408, 87th Congress, approved March 2, 1962.

* * * * *

B. *Property Tax Division:*

* * * * *

6. Administers real estate tax sales.

7. Performs such incidental duties as may be necessary for the proper performance of the functions assigned.

* * * * *

D. *Treasury Division:*

1. Collects revenues of the District of Columbia, accounts for and distributes all collections into appropriate revenue accounts, and deposits with the Treasurer of the United States all funds so received.

2. Makes disbursements in accordance with law and regulation, in cash or by checks drawn on the Treasurer of the United States, based on vouchers and payrolls duly certified by a designated certifying officer, and is accountable therefor.

3. Is responsible for all balances with the United States Treasury.

4. Dispenses and accounts for tax stamps.

5. Is responsible for the custody of trust fund securities.

* * * * *

E. *Enforcement Division:*

1. Conducts programs relating to the enforcement of collections of delinquent taxes, referring to the Corporation Counsel those accounts requiring court action.

2. Conducts investigations and takes such action as is provided by law to enforce collection of delinquent and unpaid accounts, including the filing of liens and the seizure of goods and chattels and the public or private sale of same.

3. Confers with other jurisdictions with respect to reciprocal agreements on tax matters, and makes appropriate recommendations to higher authority.

4. Sells at private sale all goods and chattels seized for non-payment of District taxes when the highest bid offered therefor at public auction is not sufficient to meet the amount of taxes, penalties and costs due thereon; and defrays the cost of advertising, handling, autioneer's fee and other expenses incidental to the holding of such sale, from the proceeds therefrom.

* * * * *

G. *Data Processing Division:*

1. Utilizing electronic data processing systems and related equipment, performs centralized data processing operations for the Finance Office, including but not limited to tax, accounting, and payroll programs.

2. From time to time, performs automatic data processing services for the departments and agencies of the District of Columbia, based on the needs and requirements of such departments and agencies and the Division's schedule of operations.

3. Performs such other related duties as may be necessary for the proper performance of the functions assigned.

ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

Organization Ord. No. 122, 59–33, Jan. 8, 1959, amended Oct. 17, 1961, and Feb. 18, 1964, ordered:

That Reorganization Order No. 53, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 122, and amended to read as follows:

* * * * * *

PART III

A. *Director, Department of Highways and Traffic.*—The Director, Department of Highways and Traffic, as head of the Department, and as agent of the Commissioners of the District of Columbia where so designated in municipal regulations, shall be responsible for developing, proposing and implementing highway and traffic programs and policies; for the type, design, location, construction, operation and maintenance of a highway system, including the establishment and change of grades for streets and alleys; and for the planning and operation of a traffic system. In carrying out these authorities and responsibilities, the Director shall be cognizant of and take into account the economics, costs, esthetics and effect on physical environment. Except as hereinafter otherwise provided, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to delegate authority and assign responsibility to officials and personnel of the Department in such degree as, in his judgment, is necessary to establish and maintain efficiency and good administration. All authority vested in the Director, including all authority redelegated by the Director pursuant to authorities specified herein, shall be exercised in accordance with applicable laws, rules, regulations, and applicable Commissioners' Orders or directives issued pursuant to Commissioners' Orders.

B. The Director shall establish, within the Offices and Bureaus hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components; provided, that all actions establishing, altering, changing or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration for appropriate action pursuant to applicable Commissioners' Orders.

PART IV

* * * * *

D. *Bureau of Construction and Maintenance.*—Directs the construction, maintenance, repair, and inspection program for highway projects and municipal wharves; performs field survey work on highway projects; procures, maintains, repairs and houses departmental vehicles and equipment and such non-departmental vehicles and equipment as the Commissioners order from time to time; performs landscaping in street right-of-way and activities related to the maintenance and beautification of such streets; operates draw spans; controls the transporting of over or undersize loads through the District; participates and furnishes equipment during emergency snow removal; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies; maintains grounds and public parking under the jurisdiction and control of the District of Columbia Government other than those specifically assigned to other District Government departments, agencies and institutions; and operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department of Highways and Traffic, including the maintenance of adjacent grounds and the providing of necessary protective, elevator, custodial and other related services.

* * * * *

ORGANIZATION ORDER NO. 123.—HOSPITAL ADVISORY COUNCIL

Org. Order No. 142, rescinded Reorganization Order No. 60, and Organization Orders 123 and 129, and replaced them with Organization Order 142, as set out in this appendix.

ORGANIZATION ORDER NO. 125.—COMMISSIONERS' COUNCIL ON HUMAN RELATIONS

Organization Ord. No. 125, 61–846, May 9, 1961, as amended Oct. 10, 1963, Jan. 30, 1964, and Sept. 17, 1964, ordered that:

In accordance with the public policy of the United States that all citizens without regard to their race, religion, color, ancestry or national origin, sex or age shall have equality of opportunity with respect to employment in the government and in the use of government facilities and services, the Board of Commissioners issued its policy orders prohibiting discrimination in the District of Columbia Government and in connection with work performed under District Government contracts ordered that:

Commissioners' Order No. 58–535, dated April 9, 1958, as amended, establishing a Commissioners' Council on Human Relations, is hereby redesignated Organization Order No. 125, and amended to read as follows:

That in keeping with these policy orders and with the public policy of the United States to encourage harmonious relations among the residents of every community and to encourage the granting of equality of opportunity by persons engaged in private business, the Board of Commissioners hereby creates the Commissioners' Council on Human Relations.

1. *Purpose.*—The purpose of the Council shall be to advise and assist the Commissioners to promote, foster, and encourage (a) the full and impartial application and observance of the Commissioners' policy on nondiscrimination within the District Government as it relates to employment and use of District-owned facilities; (b) the full and impartial application and observance of fair employment practices by persons holding District Government contracts; (c) with the approval of persons or corporations concerned, the observance and practice of fair employment policies by persons or firms in the District of Columbia; and (d) the observance and practice of good human relations, mutual understanding and equality of opportunity among the various racial, religious and ethnic groups of the community.

2. *Functions.*—a. The Council shall study, and upon complaint inquire into, and advise and assist the Board of Commissioners in relation to the following:

(1) Commissioners' nondiscrimination policy order on employment in District Government and use of District-owned facilities.

(2) Procedures to promote, assure, and maintain equal access to and advancement in employment in the District Government.

(3) Procedures prescribed by the District Government to assure compliance with the nondiscrimination-in-employment clause inserted in District contracts, in accordance with the policies of the Commissioners mentioned herein.

(4) Complaints of discrimination in employment patterns and practices contrary to the Commissioners' policy relating to District Government contracts.

(5) Programs for assisting officials, supervisors and employees of the District of Columbia Government in improvement of human relations practices.

(6) Educational programs for employer, labor, civic, educational, religious, and other nongovernmental groups in order to eliminate or reduce the basic causes of discrimination on the ground of race, creed, color or national origin.

(7) Complaints of discrimination in housing filed under the provisions of Article 45, Police Regulations, prohibiting discrimination by reason of race, color, religion or national origin against persons seeking or utilizing housing units in the District of Columbia.

b. The Council shall receive and may investigate complaints of tension, conflict and practices of discrimination and of efforts or activities of individuals or groups to incite discord, tension, hate and suspicion which may lead to breaches of peace and public disorder.

c. The Council shall serve in an advisory and consultative capacity to all departments, advisory boards, regulatory agencies and for other organizations of District Government to assure the effective compliance with the Commissioners' nondiscrimination policies and orders.

d. The Council shall perform any other advisory duties as directed by the Commissioners for the promotion of better human relations and understanding among community groups.

3. *Composition and term of office.*—The Council shall consist of eleven (11) members selected by the Board of Commissioners. Persons appointed to serve on the Council shall be outstanding persons residing or having their principal places of business in the District of Columbia and representing a cross section of the viewpoints of the community. Salaried District Government employees shall not be eligible to serve as members of the Council. Members shall hold office for terms of three (3) years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term and in the same manner as regular appointments. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

4. *Oath of office.*—Members shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Council on Human Relations, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

5. *Compensation.*—Members shall serve without compensation.

6. *Organization.*—The Board of Commissioners shall designate an Executive Director to serve the Council and such additional staff as the Board may deem necessary. The Executive Director to the Council shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization, name its own officers other than the Chairman, who shall be designated by the Board of Commissioners. It shall meet at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

7. *Administration.*—The Executive Director of the Council shall be responsible for the administration of the Council. Expenses incurred by the Council as a whole, or by individual members, or its staff, shall be met from funds provided for the administration of District affairs.

8. *Reports.*—The Council shall regularly report its activities to the Board of Commissioners.

ORGANIZATION ORDER NO. 126.—COMMISSIONERS' ADVISORY COMMITTEE ON PRACTICAL NURSING

Organization Ord. No. 126, 61–1046, June 19, 1961, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Practical Nursing.

Part I

Purpose.—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 86–708 pertaining to the licensing of practical nurses in the District of Columbia which shall become effective July 29, 1961.

Part II

Functions.—A. The Committee shall consider the following matters and advise the Commissioners thereon:

(1) The promulgation of regulations designed to implement Public Law 86–708.

(2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of practical nurses in the District of Columbia.

(3) The establishment of standards for the accreditation of schools of public nursing in the District of Columbia.

(4) The establishment of policies and procedures pertaining to the licensing of practical nurses in the District of Columbia.

(5) The issuance of bylaws pertaining to the functions and activities of the District of Columbia Practical Nursing Examining Board to be established pursuant to Public Law 86–708.

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 86–708 as directed or requested by the Commissioners.

Part III

Composition.—The Committee shall consist of seven members appointed by the Board of Commissioners on the basis of personal qualification. Persons appointed to membership on the Committee shall be of outstanding ability and shall be currently employed in the District of Columbia either as a practical nurse or as a graduate nurse duly registered under the Act of February 9, 1907, as amended, with at least five years of experience as a nurse since graduation. Three members of the Committee shall be practical nurses and four members shall be graduate nurses.

Part IV

Term of office.—All appointments of members to the Committee shall expire as of midnight July 28, 1961, at which time the Committee shall be abolished.

Part V

Compensation.—Members shall serve without compensation.

Part VI

Oath of office.—Members shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Practical Nursing, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

Part VII

Organization.—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization select its own officers and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

ORGANIZATION ORDER NO. 127.—COMMITTEE ON EMPLOYEE CONDUCT

Organization Ord. No. 127, 61–1430, Aug. 17, 1961, ordered that:

There is hereby designated a Committee on Employee Conduct composed of the three special assistants to the Commissioners. The Special Assistant to the President of the Board of Commissioners shall serve as permanent chairman. The Attorney-Editor, Office of the Secretary to the Board of Commissioners, shall serve as staff to the Committee.

The purpose of the Committee is to provide a point of contact, organizationally close to the Commissioners, for receiving and reviewing complaints, including anonymous calls, and for the handling of inquiries regarding matters that indicate possible misconduct by District Government officials and employees.

The Committee shall receive complaints, including anonymous calls and handle inquiries regarding matters that indicate possible misconduct on the part of District Government officials and employees; obtain and review all of the facts pertaining to such complaints; and

advise the Commissioners in those instances where the nature and seriousness of the complaint or inquiry warrants the attention of the Commissioners.

District Government departments and agencies will be expected to cooperate and assist the Committee in the performance of its functions.

Nothing in this Order shall supersede or modify the provisions of Reorganization Order No. 48, dated June 26, 1953, as amended, which established Police Trial and Review Boards; Reorganization Order No. 39, dated June 18, 1953, which established Fire Trial Boards; or Organization Order No. 125, dated May 9, 1961, as amended, which established the Commissioners' Council on Human Relations.

ORGANIZATION ORDER NO. 128.—COMMISSIONERS' COMMITTEE ON COMMUNITY RENEWAL

Organization Ord. No. 128, 62–285, Feb. 13, 1962, ordered:

There is hereby established in the Government of the District of Columbia a Commissioners' Committee on Community Renewal.

PART I

Policy.—The Government of the District of Columbia, working in close liaison and in cooperation with the National Capital Housing Authority, National Capital Planning Commission, and D.C. Redevelopment Land Agency, in accordance with the Housing Act of 1961, dedicates itself, and such of its resources and facilities as are available for such purposes, to the development of a realistic set of goals and objectives for the prevention and elimination of blight and deterioration in the District of Columbia through a Community Renewal Program.

PART II

Purpose.—The primary purpose of the Commissioners' Committee on Community Renewal shall be to advise the Board of Commissioners, through the Assistant Engineer Commissioner for Urban Renewal, on a realistic set of goals and objectives for the elimination of blight and deterioration in the District of Columbia through a Community Renewal Program.

PART III

Functions.—The activities of the Committee shall include, but are not limited to, the following activities:

1. To develop a basis of fact regarding existing structural conditions, neighborhood environment and blighting influences within the District of Columbia by:

a. Identifying all slum, blighted, deteriorated and deteriorating areas; and

b. Analyzing the nature and degree of blight and blighting influences within the area.

2. To identify the scope and character of the total need for renewal activities and the type of renewal treatment required to meet these needs within the framework of a Comprehensive Plan.

3. To establish the basic urban renewal objectives and policies to guide the development and effectuation of an overall, long-range program of urban renewal.

4. To establish the total program requirements necessary to achieve the basic objective of eliminating blight in the District of Columbia and relate this need to the anticipated resources of the District in regard to the following:

a. Financing such a program.

b. Handling the anticipated relocation load.

c. Providing the necessary rehousing accommodations.

d. Having the necessary legal authority, administration machinery and capacity for the enforcement of codes and ordinances, and for carrying out such a renewal program.

5. To establish a basic frame of reference and a procedure for the selection and delineation of individual projects and the determination of the priority and scheduling of individual projects within the overall Community Renewal Program.

6. To coordinate the preparation of the Community Renewal Program with the development of the Comprehensive Plan for the Nation's Capital.

PART IV

Composition and Membership.—1. The Commissioners' Committee on Community Renewal shall consist of the Assistant Engineer Commissioner for Urban Renewal, who shall serve as chairman, and the following ex-officio members:

Executive Director, National Capital Housing Authority;

Director, National Capital Planning Commission;

Executive Director, D.C. Redevelopment Land Agency;

Director, Department of General Administration;

Director, Department of Licenses and Inspections.

2. Staff assistance to the Committee will be furnished by the Office of Urban Renewal as determined by the Assistant Engineer Commissioner for Urban Renewal, who shall designate an Executive Secretary to the Committee from the Office of Urban Renewal.

3. The Commissioners' Committee on Community Renewal shall determine its own rules of procedure and may, if it so desires, establish and fill such additional officer positions, from its membership, as it may consider appropriate.

PART V

Effective date.—This Order shall be effective on and after Feb. 13, 1962.

ORGANIZATION ORDER NO. 129.—COMMITTEE ON MENTAL HEALTH NEEDS

Org. Order No. 142, rescinded Reorganization Order No. 60, and Organization Orders 123 and 129, and replaced them with Organization Order 142, as set out in the appendix.

ORGANIZATION ORDER NO. 130.—OFFICE OF RECORDER OF DEEDS, REAL ESTATE RECORDATION TAX

This order dated Apr. 26, 1962, relating to the recordation tax act [Sec. 45–721 et seq.] is set out as a note to section 45–721. [Repealed by Order No. 63–197, Jan. 24, 1963. See Org. Order 101.]

ORGANIZATION ORDER NO. 131.—MANPOWER ADVISORY COMMITTEE FOR D.C.

Organization Ord. No. 131, 62–1076, June 19, 1962, ordered:

There is hereby established in the Government of the District of Columbia a committee of persons representing management, labor, and the public at large to be known as the Manpower Advisory Committee for the District of Columbia.

PART I

Purpose.—The purpose of the Committee is to insure full community participation and support in the District's program of providing occupational training for the unemployed or underemployed under the provisions of the Manpower Development and Training Act of 1962.

PART II

Functions.—The functions of the Committee are to advise the Board of Commissioner, the Superintendent of Schools and the Director, United States Employment Service for District of Columbia on the following:

(1) Determining in advance what skills are going to be needed, where they will be needed, and what quantities.

(2) Studying the factors that impede the mobility of workers.

(3) Developing new training programs or revising existing ones.

(4) Developing on-the-job programs in local establishments.

(5) Facilitating the placement of trainees.

(6) Making maximum use of the skills and potentials of workers and assuring equal opportunity for employment of workers in accordance with their qualifications.

PART III

Composition.—The Committee shall consist of nine (9) members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. The members shall be chosen so that three represent management, three represent labor and

three represent the public at large. Members shall serve without compensation.

PART IV

Terms of appointment.—All appointments of members to the Committee shall expire as of midnight, June 30, 1965, at which time the Committee shall be abolished.

PART V

Organization.—The Committee shall designate its own officers.

ORGANIZATION ORDER NO. 132.—COMMITTEE ON YOUTH OPPORTUNITY AND COMMUNITY IMPROVEMENT

Organization Ord. No. 132, 62-1280, July 24, 1962, ordered that:

Preamble. A resolution, issued on June 29, 1962, by the President's Committee on Juvenile Delinquency and Youth Crime, reads in part as follows:

"To expedite a program of youth services, we are now allocating $100,767 from funds made available under the Juvenile Delinquency And Youth Offenses Control Act of 1961 to employ an immediate planning staff for the Washington metropolitan area.

"This staff, directly responsible to us, will work in close cooperation with the Board of Commissioners and the departments of the City, and will consult with interested citizens and groups throughout the metropolitan area. They will report * * * on the design of a planning program and appropriate vehicles for action. They will make recommendations on the best structure needed to support this plan of action."

Pursuant to the intent and purposes of this Resolution, it is hereby ordered:

PART I

Committee on Youth Opportunity and Community Improvement.—There is established, under the supervision and control of the Board of Commissioners, a Committee on Youth Opportunity and Community Improvement, herein referred to as the Committee.

PART II

Functions.—The Committee shall perform the following functions:

A. Serve as an advisory group to the Board of Commissioners in connection with the grant to the District of Columbia, as announced in the Committee Resolution.

B. Serve as an advisory and consulting group to the planning staff which is responsible, under the President's Committee, for designing a planning program for the District of Columbia, on such matters as the organizational structure needed for effective planning and action programs, and the preparation of the District's application for a planning grant scheduled for review by the President's Committee before the end of 1962.

PART III

Composition.—The Committee shall consist of the designated representative of the following organizations:

A. *Community Organizations.*—

1. Americans for Democratic Action.
2. Archdiocese of Washington.
3. Boy Scouts of America, National Capital Area Council.
4. Council of Churches, National Capital Area.
5. District of Columbia Chamber of Commerce.
6. D.C. Congress of Parents and Teachers.
7. D.C. Junior Chamber of Commerce.
8. Democratic Central Committee for D.C.
9. District of Columbia Medical Association.
10. Federation of Business Men's Associations, Metropolitan Area.
11. Federation of Citizens Associations.
12. Federation of Civic Associations.
13. Greater Washington Central Labor Council.
14. Health and Welfare Council.
15. Jewish Community Council of Greater Washington.
16. Junior League of Washington, Inc.
17. K Street Young Women's Christian Association.
18. League of Women Voters.
19. Metropolitan Washington Board of Trade.
20. National Association for the Advancement of Colored People.
21. National Conference of Christians and Jews.
22. National Council of Jewish Women.
23. Republican Committee for the D.C.
24. Washington Urban League.
25. Young Men's Christian Association, Twelfth Street Branch.

B. *Universities.*

1. American University.
2. Catholic University of America.
3. Georgetown University.
4. George Washington University.
5. Howard University.
6. University of Maryland.

C. *Government agencies.*

1. Commissioners' Offices.
2. Commissioners' Youth Council.
3. Department of General Administration.
4. Department of Public Health.
5. Department of Public Welfare.
6. Department of Vocational Rehabilitation.
7. Metropolitan Police Department.
8. National Capital Housing Authority.
9. Office of Urban Renewal.
10. Public Library.
11. Public Schools.
12. Recreation Department.
13. The Juvenile Court of the District of Columbia.
14. U.S. Employment Service for the D.C.

Additional organizations may be represented on the Committee, from time to time, in order to insure maximum community support of the planning and action programs.

PART IV

Terms of appointment.—A. Terms of appointment of members shall continue until such time as the permanent organizational structure needed for effective planning and action programs is determined and established, at which time all appointments shall automatically expire and the Committee shall be abolished.

B. Alternate representatives may be designated, at the discretion of the organization or member representing an organization. However, such matters as voting privileges will be restricted to one vote per organization represented.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Organization.—A. The Committee shall be initially composed of a Chairman, three Associate Vice Chairmen, and a Secretary, to be elected by simple majority of Committee members present and voting at its initial meeting. These five elected officers shall comprise the Executive Board of the full Committee. The Executive Board may be expanded to include additional members, elected at large, in the discretion of the membership.

B. The Chairman, upon the advice and consent of the Executive Board, may appoint such subcommittees as are considered necessary to fulfill the purpose and functions of the Committee.

PART VII

Secretarial service.—Secretarial services shall be provided from the planning staff which is responsible to the President's Committee.

ORGANIZATION ORDER NO. 133

[There is no material for this organization order, since it was vacated before publication. However the number has been reserved for future material.]

ORGANIZATION ORDER NO. 134.—ADVISORY COUNCIL ON VOCATIONAL REHABILITATION

Organization Ord. No. 134, 62-1959, Oct. 11, 1962, ordered that:

PART I

A. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the Advisory Council on Vocational Rehabilitation.

B. *Functions.*—The functions of the Council are to advise the Board of Commissioners and the Director, Department of Vocational Rehabilitation, with respect to the following:

1. Policy and operational aspects of the vocational rehabilitation program of the District of Columbia. The Council shall make such recommendations as it may deem appropriate with respect to matters affecting the vocational rehabilitation program; keeping appropriate District officials informed of the reactions of those segments of the public affected by or interested in the vocational rehabilitation program; and providing leadership among organizations and the public at large to create understanding of the program and to enlist cooperation in its implementation.

2. Fees for rehabilitation services provided to the Department's clients.

3. Interpretation of the varied medical, occupational, and other aspects of the vocational rehabilitation program for interested citizens.

4. Provision of the leadership necessary for members of medical and related professional groups to understand the program.

5. Such recommendations as it may deem appropriate with respect to rehabilitation matters affecting the program; and

6. Provision of adequate in-service staff training in rehabilitation understanding for the staff of the Department.

C. *Composition and Membership:*

1. The Advisory Council on Vocational Rehabilitation shall consist of fifteen (15) members in addition to three ex officio members who shall be the Chairman of the Commissioners' Committee on Employment of the Physically Handicapped, and the two medical Consultants to the Director, Department of Vocational Rehabilitation. Members shall be chosen on the basis of their experience, reputation, or demonstrated interest in the field of vocational rehabilitation of the physically handicapped.

2. Members shall be appointed by the Board of Commissioners after consideration of nominations made by the Director, Department of Vocational Rehabilitation, and such other sources as they may consider appropriate.

D. *Terms of Appointment:*

1. Members shall hold office for terms of three years, except that of the initial appointments of members following the effective date of this Order, one-third shall serve for one year, such terms to expire October 31, 1963; one-third for two years, such terms to expire October 31, 1964; and one-third for three years, such terms to expire October 31, 1965. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

2. If a member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the date ending the preceding term rather than three years from the date of his appointment.

E. *Compensation.*—Members shall serve without compensation.

F. *Organization.*—At the initial meeting each year following the appointment of new members, the Council shall elect from among its members such officers as it deems necessary. All meetings of the Council will be on call of the Chairman, who shall call at least one meeting during each quarter of each fiscal year.

PART II

Effective date.—This Order shall be effective on and after October 11, 1962.

ORGANIZATION ORDER NO. 135.—COMMISSIONERS' ADVISORY COMMITTEE ON PHYSICAL THERAPY

Organization Ord. No. 135, 62–2144, Nov. 15, 1962, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Physical Therapy.

PART I

Purpose.—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 87–280 pertaining to the licensing of physical therapists in the District of Columbia, which shall become effective February 20, 1963.

PART II

Functions.—A. The Committee shall consider the following matters and advise the Commissioners thereon:

(1) The promulgation of regulations designed to implement Public Law 87–280.

(2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of physical therapists in the District of Columbia.

(3) The establishment of policies and procedures pertaining to the licensing of physical therapists in the District of Columbia.

(4) The issuance of by-laws pertaining to the functions and activities of the District of Columbia Physical Therapists Examining Board to be established pursuant to Public Law 87–280.

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 87–280 as directed or requested by the Commissioners.

PART III

Composition.—The Committee shall consist of three members appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Committee shall be of outstanding ability. They shall be currently practicing as physical therapists in the District of Columbia, with at least five years experience in physical therapy.

PART IV

Term of Office.—All appointments of members to the Committee shall expire as of midnight February 19, 1963, at which time the Committee shall be abolished.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Oath of Office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Physical Therapy, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VII

Organization.—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization, select its own officers, and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

ORGANIZATION ORDER NO. 136.—CITIZENS COUNCIL FOR THE DISTRICT OF COLUMBIA

Organization Ord. No. 136, 62–2262, December 4, 1962, ordered that:

Reorganization Order No. 2, dated July 1, 1952, as amended, is hereby redesignated Organization Order No. 136, and amended to read as follows:

PART I

Citizens Council for the District of Columbia. There is hereby established a permanent committee of citizens to be known as the Citizens Council for the District of Columbia.

PART II

Purpose.—The purpose of the Council is to increase citizen participation in the municipal government and to act in an advisory capacity to the Commissioners on matters affecting the general public.

PART III

Functions.—The Council shall:

1. Advise the Board of Commissioners on such matters as the Commissioners request.

2. Advise the Board of Commissioners on other matters as the Council itself considers appropriate.

3. Assist the Board of Commissioners in interpreting District Government programs to the public.

PART IV

Composition.—The Council shall consist of not more than twenty-five (25) members, who shall be residents of the District of Columbia, selected by the Board of Commissioners on the basis of personal qualification. Members shall hold no full-time office for which compensation is paid from funds of the District of Columbia.

PART V

Terms of Office.—Members shall hold office for terms of three years, except that, of the initial appointment of additional and new members following the effective date of this Order, six (6) shall serve until June 30, 1963, six (6) until June 30, 1964, and five (5) until June 30, 1965. The eight (8) incumbent members of the Council shall continue to serve the unexpired portion of their terms. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

PART VI

Oath of Office.—Members shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Citizens Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VII

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated herein.

PART VIII

Organization.—The Secretary to the Board of Commissioners shall serve as the Secretary to the Council, but shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization and name its own officers, provided that the internal standing Committee organization generally shall correspond to the functional grouping of the three Commissioners; and any subcommittee organization generally shall correspond to the major District Government departments and agencies. The Council shall meet at least once a month. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

PART IX

Administration.—The Secretary to the Board of Commissioners is responsible for the files and housekeeping activities of the Council, and will provide the necessary stenographic and clerical services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be paid for from appropriate District funds.

PART X

Reports.—The Council in its discretion is hereby authorized to release to the press and to the public generally, before reporting thereon to the Commissioners, the reports and recommendations of the Council on matters on which action has been taken, except in those instances where otherwise requested by the Commissioners.

ORGANIZATION ORDER NO. 137.—PUBLIC WELFARE ADVISORY COMMITTEE ON DAY CARE

Organization Ord. No. 137, 63-999, Apr. 18, 1963, as amended May 14, 1963, ordered that:

Pursuant to Public Law 87-543, approved July 25, 1962, there is hereby created in the Government of the District of Columbia a committee of citizens and government officials, representing agencies concerned with day care or day care services and professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care, to be known as the Public Welfare Advisory Committee on Day Care.

PART I

Purpose.—The purpose of the Committee is to increase citizen participation in the municipal government's public welfare program and to act in an advisory capacity to the Director of Public Welfare on all matters of general policy involved in the provision of day care services under the District plan.

PART II

Functions.—The Public Welfare Advisory Committee on Day Care shall advise the Director of Public Welfare in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new departmental policies and programs, or changes in existing departmental policies and programs, affecting provision of day care services in the District of Columbia.

2. Advise on community day care needs and the formulation and execution of long-range plans necessary to satisfy those needs.

3. Advise in coordinating the programs and activities of the Department of Public Welfare with those of community groups and private and nonprofit organizations.

4. Advise in the development of resources and the establishment of standards for day care services in the District of Columbia.

PART III

Composition.—The Committee shall consist of not more than twenty-seven (27) members, nor less than a number divisible by three, appointed by the Board of Commissioners on the basis of their personal qualifications and demonstrated interest and leadership in the field of day care. The Committee shall include at least two representatives of the Department of Public Welfare, one representative of the Department of Public Health and one representative of the Board of Education. Such other appointment shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the day care needs of the community.

PART IV

Term of Office.—The terms of office of members of the Committee shall be three years, except that, of the persons first appointed as members of said Committee, one-third of them shall be appointed for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Organization.—The Committee shall elect its own chairman and otherwise determine its own organization and designate its own officers. Secretarial services shall be furnished by the Department of Public Welfare.

ORGANIZATION ORDER NO. 138.—LABOR-MANAGEMENT ADVISORY COMMITTEE TO D.C. APPRENTICESHIP INFORMATION CENTER

Organization Ord. No. 138, 63–1552, June 25, 1963, ordered that:

There is hereby created in the District of Columbia a Labor-Management Advisory Committee to the D.C. Apprenticeship Information Center.

PART I

Purpose.—The purpose of the Committee shall be to serve in an advisory capacity to the D.C. Apprenticeship Information Center in promoting equal opportunity in apprenticeship and training in the District of Columbia.

PART II

Functions.—

1. The Committee shall furnish advice on the following matters:

(a) Ways and means of locating apprenticeship job openings and qualified applicants for testing, counseling and referral, by the Center, to available jobs.

(b) Development of a cadre of group leaders who understand the apprenticeship program and who can provide leadership among minority groups in resolving apprenticeship problems.

(2) The Committee shall serve as a source of contact between employer and labor representatives of the apprenticeable trades, community leadership who are promoting equal opportunity in apprenticeship training, and the Department of Labor personnel who have staff responsibility for the Center's operation.

PART III

Composition.—The Committee shall consist of ten (10) members appointed by the Board of Commissioners, four (4) representing labor, four (4) representing management, and two (2) representing the public, provided that at least one member representing labor and one member representing management shall be appointed from among the members of the D.C. Apprenticeship Council.

PART IV

Terms of Office.—The initial term of office of members shall be for one year. Thereafter the terms of office of members of the Committee shall be three years, except that, of the persons first appointed at that time as members, one-third shall be appointed for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Compensation.—Members shall serve without additional compensation.

PART VI

Organization.—The Committee shall elect its own chairman and otherwise determine its own officers. The Secretary of the D.C. Apprenticeship Council shall serve as permanent Secretary to the Committee.

ORGANIZATION ORDER NO. 139.—COMMISSIONERS' PLANNING AND URBAN RENEWAL ADVISORY COUNCIL

Organization Ord. No. 139, 64–188, Feb. 11, 1964, ordered that:

Commissioners' Order No. 57–508, dated Mar. 26, 1957, as amended, establishing the Commissioners' Planning Advisory Council, and Organization Order No. 110 (Commissioners' Order No. 58–1485), dated Sept. 4, 1958, as amended, establishing the Commissioners' Urban Renewal Council, are hereby rescinded and replaced by Organization Order No. 139 which reads as follows:

PART I

Commissioners' Planning and Urban Renewal Advisory Council.—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the Commissioners' Planning and Urban Renewal Advisory Council.

PART II

Purpose.—The purpose of the Commissioners' Planning and Urban Renewal Advisory Council is to advise and assist the Board of Commissioners in connection with long-range planning and programing, including urban renewal, and to provide citizen leadership in the physical renewal and preservation of the District of Columbia.

PART III

Functions.—In accomplishing its purpose, the Council shall:

(1) Review and make appropriate recommendations on long-range plans and public works programs.

(2) Study and make appropriate recommendations on Urban Renewal activities.

(3) Study and make recommendations on special housing problems as they affect ethnic and racial minorities, large low-income families, low middle-income families, single individuals, handicapped persons, the aging, and students, including the problems of availability of housing, financing, and impact of urban renewal and public improvement programs.

(4) Exercise leadership within the community to encourage and stimulate the broadest possible community and citizen interest, understanding and participation in planning, programing, budgeting, and urban renewal.

PART IV

Composition and membership.—The Council shall consist of fifteen (15) members appointed by the Board of Commissioners, who shall be residents of the District of Columbia for a period of at least 3 years immediately prior to appointment. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective upon, and insight into, the planning and urban renewal needs of the District of Columbia.

PART V

Terms of appointment.—1. Members shall hold office for terms of 3 years, except that on the initial appointments of members following the effective date of this Order, one-third shall serve for 1 year, such terms to expire Jan. 15, 1965; one-third shall serve for 2 years, such terms to expire Jan. 15, 1966; and one-third shall serve for 3 years, such terms to expire Jan. 15, 1967. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term in the same manner as regular appointments. After the expiration of his term, each member shall continue to serve until a successor has been appointed and has qualified. No person who has served 6 years or more consecutively as a member shall be reappointed as a member until after the expiration of 1 year from the end of such service.

2. If a member is appointed more than 1 day after the date ending the preceding term, the term of such member shall expire 3 years from the date ending the preceding term rather than 3 years from the date of his appointment.

PART VI

Oath of office.—Members shall take an oath of office as follows:

"I _____, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Planning and Urban Renewal Advisory Council of the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties, so help me God."

PART VII

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VIII

Organization.—

1. The Board of Commissioners shall designate the Chairman of the Council.

2. The Council shall otherwise determine its own organization, including the establishment of auxiliary committees.

3. The Council shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the request of the Assistant Engineer Commissioner for Planning and Programing, the Board of Commissioners, or a majority of the Council membership. When meetings are called by the members, the Assistant Engineer Commissioner for Planning and Programing shall be notified in advance in order that the necessary staff assistance may be provided, as appropriate.

PART IX

Administration.—

1. Staff assistance to the Council shall be furnished by staff available to the Engineer Commissioner.

2. Subject matter specialists shall be made available from operating departments as may be appropriate to assist the Council in its deliberations.

3. Expenses incurred by the Council as a whole or by individual members, when authorized by the Board of Commissioners, will become an obligation against funds so designated.

PART X

Reports.—Reports and recommendations of the Council shall be furnished to the Board of Commissioners and the Director of General Administration.

PART XI

Effective date.—This Order is effective on and after Jan. 16, 1964.

ORGANIZATION ORDER NO. 140.—DEPARTMENT OF PUBLIC WELFARE

Organization Ord. No. 140, 64–191, Feb. 11, 1964, ordered that:

Reorganization Order No. 58, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 140, and amended to read as follows:

PART I

Department of Public Welfare.—There is hereby established in the Government of the District of Columbia a Department of Public Welfare, headed by a Director. The supervisory responsibility of the Board of Commissioners for activities of the Department of Public Welfare shall be exercised through a designated Commissioner.

PART II

Purpose.—The Department of Public Welfare is established for the purpose of planning, implementing and directing public welfare programs which will most effectively fulfill the community's obligations to its underprivileged, and performing certain other allied functions, including the furnishing of institutional care as provided by law.

PART III

Director, Department of Public Welfare.—A. The Director, Department of Public Welfare, as head of the Department, and as agent of the Commissioners of the District of Columbia, where designated in municipal regulations, shall be responsible for developing and implementing a public welfare program consistent with Federal laws and programs and Commissioners' Orders. The Director shall perform all the functions vested in the Commissioners by the District of Columbia Public Assistance Act of 1962, except the adoption and promulgation of regulations. In carrying out these authorities and responsibilities, the Director shall be cognizant of and take into account the social obligations of the government to its people in as economical and business-like manner as possible, consistent with the intent of applicable laws and within the resources available. The Director shall consult with the Commissioners, or the designated Commissioner through whom the supervisory responsibility of the Commissioners is exercised, on matters which are of primary importance to the operation and activities of the Department.

B. Except as hereinafter otherwise provided, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to redelegate authority and assign responsibility to officials and personnel of the Department in such degree as in his judgment is necessary to establish and maintain efficiency and good administration. All authority vested in the Director, including all authority redelegated by the Director pursuant to authorities specified herein, shall be exercised in accordance with applicable laws, regulations and Commissioners' Orders or directives issued pursuant to Commissioners' Orders.

C. The power to consent to surgical operations on wards other than in certain types of emergency situations to be specified by the Director, the power to consent to the adoption of wards whose parents have been permanently deprived of custody by court order, the power to discharge wards when desirable prior to the expiration of their period of commitment, and the power to make final decisions on appeals and grievances presented by clients in connection with actions taken by components of the Department, shall be limited to the Director or a deputy or acting director. The authority vested in the Director to execute agreements with the U.S. Department of Agriculture, subject to the approval of the Board of Commissioners, for the acceptance and distribution of surplus food commodities donated by such Department may be exercised only by the Director, a deputy director or acting director. When recommended by the corporation counsel, the director, a deputy director or acting director is authorized to approve compromises and settlements of all claims and suits instituted on behalf of wards.

D. The Director may establish under the major organizational components, hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components; provided, that all actions establishing, altering, changing or modifying such organizational components shall be submitted at least 10 days prior to the effective date of such actions, to the Director, Department of General Administration, for review as to conformance with sound principles of management and organization and applicable Commissioners' Orders and policies. Questions which cannot be resolved between the Departments concerned shall be referred to the Board of Commissioners.

PART IV

Organization and functions.—The Department of Public Welfare shall be comprised of the following major organizational components in addition to the Office of Investigations and Collections and certain volunteer, medical and technical staff consultants within the Director's office, in which responsible officials and personnel assigned there to shall perform the functions described herein.

A. *Controller and Deputy Director for Administration.*—Plans, directs, and coordinates the administrative and business management of the Department. Exercises full authority over the performance of all (normal) staff and auxiliary functions including program analysis, evaluation and review; budget; personnel; procurement; management improvement; statistical research; acccunting; organizational planning; data processing; distribution of surplus foods; and related administrative services. Participates in and assumes leadership responsibility for policy and financial program planning, review and appraisal for purposes of establishing workable policies and program objectives and measuring the Department's results and effectiveness in applying its policies and achieving its objectives. Coordinates efforts with the Director and the other deputies and maintains liaison with the Department of General Administration and with other District and Federal Government agencies.

B. *Deputy Director for Institutional Services.*—Plans and directs the activities and operations and exercises supervision and control of the Department's welfare institutions. Implements policies and regulations governing the operation of these facilities to insure effectiveness

of the treatment program and the security and safety of the residents. Maintains the physical plant and grounds and accounts for expenditures. Participates in overall Departmental planning, budget justifications and implementation of the programs. Coordinates with the Director and the other deputies in regard to related activities. Maintains liaison with other appropriate District, State, Federal, and community agencies.

C. *Deputy Director for Family and Children Services.*—Plans, develops, and proposes policies and regulations for governing the family and children services provided by the Department. Implements and administers approved policies and regulations governing the family and children services provided to insure effectiveness of the direct assistance and services to individuals, families and children in the community. Initiates and administers policies and regulations to implement all public assistance and welfare laws (including, without limitation, the Social Security Act, the District of Columbia Public Assistance Act of 1962, and the Juvenile Court Act), and the care, custody, placement, and adoption of children. Directs the operation of all family and children services and exercises supervisory responsibility over the divisions concerned to insure proper implementation of policies and the maintenance of accurate standards of performance. Participates in overall departmental planning, budget justifications and implementation of the programs. Coordinates with the Director and the other deputies in regard to related activities. Maintains liaison with other appropriate District, State, Federal, and community agencies.

PART V

Repeal of previous orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this Order are to the extent of such conflict, hereby repealed, but nothing contained in this Order shall in any way alter, amend, or repeal any municipal regulation adopted or promulgated by the Commissioners.

PART VI.

Effective date.—This Order shall become effective on and after Feb. 11, 1964.

ORGANIZATION ORDER NO. 141.—DEPARTMENT OF PUBLIC HEALTH

Organization Ord. No. 141, 64–193, Feb. 11, 1964, ordered that:

Reorganization Order No. 52 (Commissioners' Order L.S. 4259–B), dated June 30, 1953, as amended, and Reorganization Order No. 57 (Commissioners' Order L.S. 4262–B), dated June 30, 1953, as amended Aug. 11, 1964, and Aug. 20, 1964, are hereby combined, amended, and redesignated Organization Order No. 141 to read as follows:

PART I

Department of Public Health.—There is established, under the direction and control of a Commissioner, a Department of Public Health, headed by a Director of Public Health.

PART II

Purpose.—The Department of Public Health is established for the purpose of planning, implementing, and directing public health and hospital care programs, including the enforcement of applicable laws and regulations which will effectively maintain and improve the health and well-being of the people of the District of Columbia and for the performance of certain allied medical and para-medical functions.

PART III

Director of Public Health, Department of Public Health.—A. The Director of Public Health, as agent of the Commissioners of the District of Columbia, where so designated in Commissioners' Orders or District Regulations, shall be responsible for carrying out the purposes and functions set forth in Part II hereof. The Director shall advise and consult with the Commissioners, or the designated Commissioner through whom the supervisory responsibility of the Commissioners in exercised, on matters which are of primary importance to the operation and activities of the Department.

The Director, as head of the "State agency," for mental health and mental retardation programs (Public Law 88–156 and Public Law 88–164) shall (1) plan the construction of and operate community mental health centers, (2) collaborate with the Director of Public Welfare and the Superintendent of Schools in developing programs for the mentally retarded and plan the construction of mental retardation facilities, and (3) provide assistance, upon request, to the Director of Public Welfare and to other departments as appropriate in the operation of mental retardation facilities.

B. Except as hereinafter otherwise provided and subject to applicable laws, rules, regulations, and Commissioners' Orders or directives issued pursuant to Commissioners' Orders, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to redelegate authority and assign functions to officials and personnel of the Department in such degree as in his judgment is necessary to establish and maintain efficiency and good administration. He may, pursuant to Sec. 32–327, D.C. Code, 1961 ed., accept such volunteer services as are necessary in connection with the establishment and maintenance of the medical services of the Department.

C. The Director may establish under the major organizational components, hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components: *Provided,* That all actions establishing, altering, changing or modifying such organizational components shall be submitted at least 10 days prior to the effective date of such actions, to the Director, Department of General Administration, for review as to conformance with sound principles of management and organization and applicable Commissioners' Orders and policies. Questions which cannot be resolved between the departments concerned shall be referred to the Board of Commissioners.

D. The Department shall be the sole agency of the Commissioners (1) for carrying out the purposes of Title XVII of the Social Security Act, as amended, and for the performance of all acts required by such title to be performed, (2) to prepare and to administer, or supervise the administration of, the District of Columbia plan to carry out the purposes of Part C of the Mental Retardation Facilities Construction Act (title I, P.L. 88–164, approved October 31, 1963), and (3) to prepare and administer, or supervise the administration of, the District of Columbia plan to carry out the purposes of the Community Mental Health Centers Act (title II, P.L. 88–164, approved October 31, 1963).

PART IV

Organization and functions.—The Department of Public Health shall be comprised of the following major organizational components, each headed by an associate director, in which responsible officials and personnel assigned thereto shall perform the functions described herein:

A. *Associate Director for Administration.*—Plans, directs, and coordinates the administrative and business management of the Department. Under the Director, exercises full authority over the performance of all staff and auxiliary functions including budget and finance; management analysis and manpower utilization; program planning, research, statistics and data processing; administrative services including building management and office services; and procurement and supply management on a centralized basis. Participates in and assumes leadership responsibility for developing department policies and maintains and correlates the codified health regulations; examines the need for legislation and regulations, drafts recommended changes and provides advice and assistance in related matters. Participates in, and assumes leadership for, financial program planning, review and appraisal for purposes of establishing workable policies and program objectives and for purposes of measuring the Department's results and effectiveness in applying its policies and achieving its objectives. Coordinates efforts with the Director and the Associate Directors and maintains liaison with appropriate District

and Federal Government agencies and private health organizations; and supervises and directs the activities of the following organizational entities:

1. *Budget and Finance Division.*—Prepares the Department's annual and supplemental budget requests; maintains budgetary control of funds and authorized positions; develops and administers a departmental financial and cost reporting system meshed with the Department's program and performance reporting and analysis system and with the District's Quarterly and Annual reporting systems; prepares special cost analyses and budget and accounting reports as appropriate.

Collects accounts for patients receiving health services at District Government institutions and facilities, St. Elizabeths Hospital, and contract hospitals, referring to the Corporation Counsel those accounts requiring court action.

2. *Management Analysis Division.*—Provides management analysis to the bureaus, offices, and institutions of the Department; conducts studies and surveys of record systems, directives, manuals, procedures, manpower and equipment utilization, forms management and space utilization; recommends new or improved methods, procedures, forms and equipment for improving economy and efficiency of the operations; and assists in implementing and installing the approved management improvements.

Provides centralized machine processing for the Department and maintains accounts and renders bills by automatic data processing for health services furnished patients at District Government institutions and facilities, St. Elizabeths Hospital, and private contract hospitals. Notifies the Budget and Finance Division of the Department of Public Health and D.C. General and Glenn Dale Hospitals of delinquent accounts.

3. *Planning, Research and Statistics Division.*—Reviews periodically the programs of the Department with the objective of improving or modifying existing programs and evaluating them in relation to potential or proposed new programs. Keeps abreast of developments in the health field by monitoring new concepts and programs under consideration at the Federal level in which the District may ultimately wish to participate or be required to participate. Prepares and coordinates the preparation of a department-wide program and performance reporting and analysis system.

Initiates, studies, and carries out research projects and maintains liaison with appropriate Federal agencies concerned with research grants; provides summarization of statistical data reflecting the performance of the bureaus, offices and hospitals; supplies statistical services in the measurement of program performance; administers and maintains custody of birth and death records; and maintains liaison with statistical and research officials in both governmental and private health and welfare organizations.

4. *Personnel Division.*—Administers a centralized personnel program, a staff training program for the Department and such other related programs as may be developed by the department; provides a recruitment service for the bureaus, offices and hospitals; maintains an employee relations service; promotes and administers an employee incentive award program; maintains a position classification service, including the preparation of position descriptions, and the classification of positions within the limits of delegated authority in accordance with District of Columbia Government and U.S. Civil Service Commission standards.

5. *Administrative Services Division.*—Provides maintenance, repairs, custody, and security for the building, grounds, and furnishings used by the Department where such responsibility is not vested in other departments and agencies; furnishes centralized office services, including mail and messenger service; furnishes central files and records service; furnishes patient and interbuilding transportation service, reproduction and assembly services; performs special studies and services.

6. *Procurement and Supply Division.*—Provides centralized procurement and supply management functions and services; maintains or supervises the maintenance of a perpetual inventory of storage items and accountability for all personal property; conducts periodic physical inventories; maintains control of or supervises the control, receipt, warehousing and distribution of all items; and maintains liaison with the Procurement and Finance Offices of the Department of General Administration.

7. *Health Education and Information.*—Develops and implements programs and projects of health education and information, designed to promote the widespread use of preventive health measures in the community and adequate personal and social health and sanitary habits, to combat the spread of communicable diseases, abate the effects of chronic diseases and provide for a healthful environment.

Maintains relationship with the various news media; develops and disseminates educational material; provides centralized visual aids and information to the general public; and maintains liaison with the Public Information Unit, with voluntary health agencies and with community organizations.

B. *Associate Director for Preventive Services.*—Develops and implements a program of preventive services executed by the bureaus under his direction; and coordinates the activities of these bureaus. Assists in determining policies and programs designed to insure coordination of activities among the major component program areas of the Department and in minimizing duplication of services and activities in these areas; renders advice to the Director in connection with problems, activities and the direction of preventive services under his supervision. Supplies medical, nursing, and other para-medical preventive services to the public, private and parochial schools, and consultative and other services to the Departments of Public Welfare, Corrections, and Vocational Rehabilitation, the Coroner and the Board of Police and Fire Surgeons, as appropriate. Provides consultative services to community health agencies and other private agencies and facilities engaged in preventive health services.

1. *Bureau of Maternal and Child Health.*—Develops and executes major programs and policies and enforces regulations for the promotion and protection of maternal and child health in the District of Columbia, including the provision of a comprehensive range of integrated multidisciplinary medical and other professional services in clinics, hospitals, schools (public and private) and homes, except for mental health activities, which are performed by the staff of the Associate Director for Mental Health and Retardation; cooperates with staff of Associate Director for Mental Health and Retardation in the provision of services for the mentally retarded, enforces standards of care for maternity patients, infants and children in hospitals, other institutions and places, such as public, private, and parochial schools, caring for children away from their own homes, including those in foster homes, day care centers or nursery schools.

2. *Bureau of Nursing.*—Furnishes public health nursing care in public, private, and parochial schools, homes and clinics, including family health instruction and carries out epidemiological investigations. Develops, in collaboration with medical, professional, and lay groups, policies and standards of public health nursing care provided in departmental facilities and services. Provides for the inspection of nursing and personal care homes and allied institutions.

3. *Bureau of Communicable Disease Control.*—Makes epidemiological studies of the prevalence and means of transmittal of contagious diseases and the procedures to prevent the spread thereof; develops and enforces regulations for the control of contagious diseases; quarantines, isolates, or restricts the movement of diagnosed contagious disease patients and determines when quarantine may be lifted; performs or supervises programs of immunization; investigates outbreaks of food poisoning and examines food handlers; investigates instances of rabies and other animal diseases affecting humans and institutes proper methods of control; operates the D.C. Pound and exercises the police powers delegated by the Commissioners incident thereto, and enforces regulations pertinent to the care of animals.

4. *Bureau of Chronic Disease Control.*—Provides preventive health services for chronic diseases, including heart, rheumatism, arthritis, diabetes, glaucoma, and others; provides diagnostic and detection clinics and home care services; makes studies and reports upon morbidity trends

in chronic diseases, and promotes community health measures to control them through early detection and prevention; and plans, coordinates and executes programs, including enforcement of laws and regulations applicable to tuberculosis control, venereal disease control, and cancer and neoplastic disease control.

5. *Bureau of Laboratories.*—Provides centralized laboratory services for the Department and other Departments such as Police, Public Welfare, Corrections, the Coroner and the Board of Police and Fire Surgeons, as appropriate, in support of the preventive and medical care programs including a chemistry laboratory, a bacteriological laboratory, a serology laboratory, and other special laboratory facilities and services. Recommends and enforces standards and regulations for the operation of private laboratories.

6. *Bureau of Dental Health.*—Provides a coordinated departmentwide public health dentistry program, including operation of neighborhood dental clinics for preventive and treatment services; provides dental hygienist services in the public, private and parochial schools, and other departments as appropriate; provides oral surgery for adults and other dental services as appropriate; and provides communitywide preventive dental health activities.

7. *Bureau of Special Services.*—Develops and implements communitywide programs and services not otherwise assigned, including a Districtwide employee health service, an occupational health program, an accident prevention program, medical social services, nutritional services, and health mobilization services.

C. *Associate Director for Mental Health and Retardation.*—Develops and implements a mental health and retardation program to be executed by the bureaus under his direction; coordinates the activities of these bureaus. Assists in determining policy and programs designed to insure coordination of activites between the major component program areas of the Department and in minimizing duplication of services and activities among these areas; renders advice to the Director in connection with problems, activities and the direction of mental health and retardation services under his supervision. Supplies mental health and mental retardation services to the public, private and parochial schools, to the Departments of Public Welfare, Corrections, Vocational Rehabilitation, and the Board of Police and Fire Surgeons, as appropriate. Discharges the duties imposed by law upon the Commissioners with respect to drug and narcotics addiction.

1. *Bureau of Community Mental Health.*—Develops and executes a comprehensive community mental health program, consisting of preventive measures, diagnosis of mental illness, classification, treatment, and rehabilitation of children and adults in community mental health facilities, including clinics in the Department, the public, private, and parochial schools, and the Department of Public Welfare; provides home psychiatric services for the alleviation of mental illness and referral to appropriate community agencies for followup and furnishing clinic services; and provides diagnosis and consultation to judges, probation officers, other officials of District courts and the Department of Corrections.

2. *Bureau of In-Patient Care.*—Evaluates and coordinates the inpatient psychiatric services provided for the Department's hospitals. Evaluates similar services provided in contract institutions including Saint Elizabeths and in other private institutions, making recommendations with regard to the quality of such services, the criteria governing the transfer of patients in a progressive program of effective care, and the provision of psychiatric care by contract.

3. *Bureau of Alcoholic Rehabilitation and Drug Addiction.*—Furnishes clinical and other services for the diagnosis, treatment, and rehabilitation of alcoholics or narcotic addicts; furnishes diagnostic and consultative services to the courts, other District agencies, and various agencies in the community; and develops policies and procedures pertaining to screening, intake, diagnosis, treatment, and disposition of cases.

4. *Bureau of Mental Retardation.*—Operates or furnishes diagnostic services, residential and day-care facilities, special training, recreational, and educational programs and work therapy activities for mentally retarded children and adults; develops a coordinated program for all these services; collaborates with the Departments of Public Welfare and Corrections in supplying these services to the wards of those departments; and provides consultative services to the Department of Vocational Rehabilitation and to community agencies.

D. *Associate Director for Medical Care and Hospitals.*—Develops and implements a program of medical care and hospital facilities executed by the components under his direction, including the inspection and enforcement of regulations applicable to hospitals and other medical-care facilities, such as pharmacies, nursing homes, personal-care homes, and foster homes; and coordinates the activities of these components. Assists in determining policy and programs designed to insure coordination of activities among the major component program areas of the Department to minimize duplication of services and activities among these areas; and renders advice to the Director in connection with problems, activities, and the direction of medical care and hospital facilities under his supervision. Supplies medical care and hospital services to the Departments of Public Welfare, Corrections, Vocational Rehabilitation, and the Board of Police and Fire Surgeons, as appropriate.

1. *D.C. General Hospital.*—Provides comprehensive hospital care and treatment including inpatient services, outpatient services and emergency room treatment; conducts medical research; and maintains intramural and extramural training facilities and services for medical, nursing and other hospital personnel.

2. *Glenn Dale Hospital.*—Provides hospital care and treatment for tuberculosis patients, patients suffering from other chronic disease conditions, and patients in medical emergencies; conducts medical research; and maintains intramural and extramural training facilities and services for medical and hospital personnel.

3. *Bureau of Medical Assistance and Contracts.*—Determines eligibility and ability to pay for services provided inpatients and outpatients at D.C. General Hospital, Glenn Dale Hospital, and clinics where appropriate, and for patients admitted at District expense to the private contract hospitals, Freedmen's Hospital and other specialized institutions in the area; provides advice on the ability of persons to pay when they are presented for hearing before the Commission on Mental Health; maintains a nonemergency transportation service; negotiates with State agencies for the return of nonresident patients being cared for at District expense, authorizes return of District residents from States to the District and arranges transportation therefor; negotiates contracts for payment for services rendered; initiates and administers contracts with surrounding jurisdictions for medical services; initiates and administers contracts with private hospitals for the care of patients at District expense; and initiates and administers contracts with private physicians for medical care.

4. *Bureau of Hospital Planning and Review.*—Plans and coordinates activities required under the Hospital Survey and Construction Act, as amended, including the development and review of plans and proposals for construction and renovation of hospitals, nursing homes, and other medical care facilities; conducts or directs the conduct of inspections of hospitals, and other medical-care facilities for the purpose of enforcing health regulations applicable to hospitals, nursing homes, personal-care homes, and foster-care homes, recommends standards for utilization, operation, and staffing of hospital and other medical-care facilities; and prepares reports, plans, and analyses of hospital and medical-care utilization in relation to community needs for such institutions, except for maternal and child health activities which are performed by the staff of the Associate Director for Preventive Services.

5. *Bureau of Pharmacies.*—Provides pharmacy controls and services for the Department and other departments, as appropriate, in support of the preventive, mental health, and medical-care programs.

E. *Associate Director For Environmental Health.*—Develops and implements a program of environmental health to be executed by the bureaus under his director; and coordinates the activities of these bureaus; assets in determining policy and programs designed to insure

coordination of activities among the major component program areas of the Department in minimizing duplication of services and activities between these areas; and renders advice to the Director in connection with problems, activities, and the direction of environmental health services under his supervision.

1. *Bureau of Public Health Engineering.*—Furnishes public health engineering services for the purpose of reducing air pollution, radiation hazards, industrial hazards, water pollution, and contamination from sewage; and furnishes public health consulting services to businesses, industries, and to District agencies.

2. *Bureau of Milk Control.*—Provides for the inspection and approval of dairy farms, milk processing plants, the manufacture and handling of frozen desserts and other dairy products; recommends standards and methods for compliance with the laws and regulations applicable thereto; and enforces all the health laws and regulations with respect to such dairy products.

3. *Bureau of Food and Drugs.*—Provides for inspection of conditions and methods of operation in food and drug establishments; recommends standards of food sanitation and drug purity, maintains a food technology service for the benefit of food service industries with emphasis on standards and methods of improving sanitation; studies use of potentially dangerous chemicals; and recommends and enforces appropriate laws and regulations with respect to these functions.

4. *Bureau of Community Hygiene.*—Provides for the inspection of sanitary and other conditions in commercial establishments, vacant land, and public space; conducts public relations and educational activities to maintain standards of sanitation and wholesome environmental conditions in commercial establishments, vacant land, and public space; provides vector control on vacant land, public space, and in commercial and industrial areas; and enforces health regulations applicable thereto, except for those enforced by the Bureau of Milk and Veterinary Services and the Bureau of Food and Drugs.

PART V

Effective date.—The provisions of this Order shall become effective on and after Feb. 11, 1964.

ORGANIZATION ORDER 142.—PUBLIC HEALTH ADVISORY COUNCIL

Organization Order No. 142, 64–194, Feb. 11, 1964, ordered that:

Reorganization Order No. 60, Public Health Advisory Council, as amended, Organization Order No. 123, Hospital Advisory Council, as amended, Organization Order No. 129, Committee on Mental Health needs, C.O. 302,386/1, dated Mar. 21, 1950, reappointing an Advisory Committee on Alcoholic Rehabilitation, as amended, and letters of Commissioner Karrick, dated Oct. 25, 1957, creating the Food Service Industry Advisory Committee, to the Director of Public Health, are hereby rescinded and replaced by Organization Order No. 142, which reads as follows:

There is hereby created in the District of Columbia a committee of citizens representing the community at large to be known as the Public Health Advisory Council established pursuant to the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952, and pursuant to the requirements of Title 42, Secs. 291b(a)(2) and 291u(a)(1) of the U.S. Code, 1958 ed. (pertinent parts of the Hill-Burton Act) and the requirements of § 24–514 of the D.C. Code, 1961 ed.

PART I

Purpose.—The Public Health Advisory Council is established to provide for advisory participation by citizens, lay and professional, in the District Government's public health program including the construction and regulation of hospitals, medical and related facilities, and to act in an advisory capacity to the Director of Public Health on matters affecting the public.

PART II

Functions.—It is the intent of the Board of Commissioners that the Public Health Advisory Council shall, in general, study and advise the Director of Public Health and inform the Committee on Public Health, Education, and Welfare of the Citizens Council in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new policies, regulations, and statutes or changes in existing policies, regulations, or statutes, affecting the public health including hospital programs.

2. Advise on public health and hospital needs and desires and the formulation and execution of programs necessary to satisfy those needs and desires.

3. Advise and assist in coordinating the programs and activities of the Department of Public Health with those of community groups, associations, and professional organizations.

4. Interpret the activities of the Department of Public Health to the public and stimulate public interest, understanding and participation of the community in solving public health problems.

5. Study the need for hospital services, beds, and facilities and make recommendations with respect thereto based upon a continuing evaluation of such services, beds, and facilities.

6. Evaluate proposals for operation, construction, and utilization of hospitals and related facilities, public or private, within the District (except Federal hospitals) financed in whole or in part through reimbursement or other processes from public funds, such recommendations to include but not be limited to location of such hospitals, type and number of beds, and services to be furnished.

7. Study and evaluate the budget, programs, operations, and activities of the Department and make appropriate recommendations with respect to changes which may appear desirable.

PART III

Composition and Membership.—The Council shall consist of 21 members (residents of the District of Columbia for a period of at least 1 year immediately prior to appointment) appointed by the Board of Commissioners on the basis of personal qualifications, or official position in the District of Columbia Government. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective upon, and insight into, the health and hospital needs and desires of the community.

Members shall hold no full- or part-time office for which compensation is paid from District funds or from Federal grants to the District of Columbia with the exception of those appointed because of their official position in the District of Columbia Government.

The Council shall consist of the representatives described in the three groups as follows—

1. *Public Health—General:*
   (a) Two or more individuals of outstanding ability in the medical profession.
   (b) One or more individuals knowledgeable in medical rehabilitation techniques.
   (c) One or more individuals of outstanding ability in engineering.
   (d) One or more individuals of outstanding ability in the pharmaceutical profession.
   (e) One or more individuals of outstanding ability in the nursing profession.
   (f) One or more individuals of outstanding ability in the food service industry.
2. *Public Health—Hospitals:*
   (a) Four or more individuals included among whom are representatives of nongovernmental organizations or groups, District Agencies and consumers of hospital services who are familiar with the need for such services.
   (b) Two or more individuals knowledgeable in rehabilitation techniques.
3. *Community and Civic:*
   (a) Five or more outstanding and knowledgeable individuals to bring to the Council the public health needs and desires of the community.

PART IV

Term of office.—To be fixed at 3 years except for initial appointments as follows: Of the 21 members first appointed as members of said Council, 7 shall be appointed

for 1 year, 7 for 2 years, and 7 for 3 years. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. After the expiration of his term each member shall continue to serve until his successor is appointed and qualified. No person who has served 6 years or more consecutively as a member shall be reappointed as a member until after the expiration of 1 year from the end of such service.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Public Health Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties, so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Public Health Advisory Council shall determine its own organization, establishing appropriate committees and subcommittees, and shall perfect its own rules of procedures; *Provided,* That one of its Committees shall be constituted to meet the requirements of the Hospital Survey and Construction Act, as amended, and one of its Committees be constituted to meet the requirements of § 24–514 of the D.C. Code, 1961 ed. (Rehabilitation of Alcoholics). The Council shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the call of the Director of Public Health, or a majority of the Council membership. The Director of Public Health shall be notified of all such meetings sufficiently in advance and shall have the option of attending or sending his designated agent as observer.

PART VIII

Administration.—The Director of Public Health shall assist the Council in matters of administration of the Council and shall provide it with necessary staff services as needed. Expenses incurred by the Council as a whole or by individual members, when authorized by the Board of Commissioners, will become an obligation against funds so designated.

PART IX

Reports.—Reports and recommendations of the Council shall be furnished to the Director of Public Health or to the Citizens Council, or both, and may be released at such time and under such circumstances as the Director of Public Health or the Public Health Advisory Council may determine.

PART X

Effective date.—The provisions of this Order shall become effective on and after Feb. 11, 1964.

ORGANIZATION ORDER NO. 143.—COMMISSIONERS' ADVISORY COUNCIL ON HIGHER EDUCATION IN THE DISTRICT OF COLUMBIA

Organization Ord. No. 143, 64–341, Mar. 6, 1964, ordered that:

There is hereby created in the Government of the District of Columbia a committee of private citizens, educators and representatives of institutions of higher learning, including junior colleges and technical institutes, in the District of Columbia. Such committee shall be known as the Commissioners' Advisory Council on Higher Education in the District of Columbia.

PART I

Purpose.—The Council shall act in an advisory capacity to the Board of Commissioners with respect to matters concerning higher education in the District of Columbia and particularly with respect to the formulation and administration of a plan for the financing of construction, rehabilitation, and other improvements of academic and related facilities in institutions of higher learning, including junior colleges and technical institutes, in the District of Columbia.

PART II

Functions.—The Council shall:

A. Advise the Board of Commissioners in the formulation of a plan for higher education in the District of Columbia which plan shall meet the requirements of section 105(a) of the Higher Education Facilities Act of 1963 (Public Law 88–204; 77 Stat. 363).

B. Recommend to the Board of Commissioners projects that may be eligible for Federal aid under the aforesaid Act.

C. Advise the Board of Commissioners with regard to applications submitted for Federal grants and loans pursuant to the aforesaid Act.

D. Advise the Board of Commissioners with regard to policy matters in the administration of the plan for higher education in the District of Columbia.

PART III

Composition.—The Council shall consist of twenty-four (24) members appointed by the Board of Commissioners on the basis of personal qualifications and on the basis of broad representation of the public and of institutions of higher education, including junior colleges and technical institutes in the District of Columbia, and the Superintendent of Public Schools of the District of Columbia who shall serve *ex officio.* The members of the Council shall include, but not be limited to, at least one representative of the District of Columbia Board of Education, one representative each of American, Catholic, George Washington, Georgetown, and Howard universities, at least two representatives of the junior colleges located within the District of Columbia, at least two representatives of the technical institutes located within the District of Columbia, a representative of the Metropolitan Washington Board of Trade, a representative of the American Association of University Women, Washington branch, at least one representative of the professional honor societies in the District of Columbia, a representative of the Federation of Citizens Associations, and a representative of the Federation of Civic Associations.

PART IV

Term of office.—The term of office of members of the Council shall be for 3 years, except that, of the persons first appointed as members, one-third shall be appointed for 1 year, such term to expire Mar. 6, 1965; one-third for 2 years, such term to expire Mar. 6, 1966; and one-third for 3 years, such term to expire Mar. 6, 1967. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term. No person who has served 6 years consecutively as a member shall be eligible for reappointment until the expiration of 1 year.

PART V

Oath of office.—Members of the Council shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Advisory Council on Higher Education in the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members of the Council shall serve without compensation.

PART VII

Organization.—The Board of Commissioners shall designate an Executive Director to serve the Council and such additional staff as the Board may deem necessary. The Executive Director of the Council shall have no vote. The Council shall determine its own organization, name its own officers, except that the Chairman shall be designated by the Board of Commissioners. It shall meet at the call of the Board of Commissioners, or of the presiding officer of the Council, or of a majority of the Council membership.

PART VIII

Administration.—The Executive Director of the Council shall be responsible for the administration of the Council.

PART IX

Reports.—The Council shall regularly report its activities to the Board of Commissioners.

ORGANIZATION ORDER NO. 144.—INTERDEPARTMENTAL COMMITTEE ON AGING

Organization Ord. No. 144, 64–632, Apr. 28, 1964, ordered that:

There is hereby established in the Government of the District of Columbia an Ad Hoc Interdepartmental Committee on Aging.

PART I

Purpose.—The purpose of the Committee is to provide the organizational framework for governmental and community action in connection with the needs and problems of the aged and aging, and the community conditions, affected by or affecting the aging.

PART II

Functions.—(1) To study, collect, maintain, and disseminate factual data and pertinent information relative to all aspects of aging in the District of Columbia, including but not limited to the general and specific needs of the aging, available and potential resources, services, facilities and programs for the aging, and contributions which can be made by the aging.

(2) To stimulate, inform, and educate local organizations, the community at large, and older people themselves about aging, about needs and resources for the aging, and about the part they can play in improving conditions for the aging.

(3) To serve as a medium through which various public and nonpublic organizations can exchange information, coordinate programs, and engage in joint endeavors.

(4) To provide advice and information to D.C. Government departments and agencies, and nongovernmental organizations that may be considering the inauguration of services, programs, or facilities for the aging.

(5) To stimulate, promote and support nongovernmental community and private efforts and direct service programs to avoid the necessity for initiating and extending programs at public expense.

(6) To serve as a liaison between the District Government and the Office on Aging, U.S. Department of Health, Education, and Welfare, and associations of retired persons.

(7) To promote employment opportunities for older workers, including opportunities for uncompensated volunteer work.

(8) To identify areas needing research, encourage research, and assist in obtaining funds for research and demonstration projects.

PART III

Composition.—The Committee shall consist of the Director of Public Welfare, the Director of Public Health, the Director of Vocational Rehabilitation, and the Director of General Administration, each serving ex officio and without additional compensation; and the Superintendent of Schools, the Director of Recreation, the Director of the U.S. Employment Service for D.C., and the Executive Director of the National Capital Housing Authority, who shall serve without additional compensation and with their concurrence. The Director of Public Welfare shall serve as permanent chairman. Each member may designate an alternate member to serve during his temporary absence, and may utilize the services of staff of his Department in furthering the objectives of the Committee.

PART IV

Organization.—The Committee is authorized to establish and disestablish so many advisory subcommittees as it considers advisable and useful, and to appoint, with their concurrence, such government and citizen members to the subcommittees as it considers necessary and appropriate, provided that members of said advisory subcommittees shall serve without compensation.

PART V

Staff Assistance.—The Director of Public Welfare, in his capacity as Chairman, is authorized to designate an Executive Secretary to serve the Committee and such additional staff as he considers necessary, to be paid out of properly authorized funds, subject to the concurrence of the Committee, and the approval of the Commissioners.

PART VI

Meetings and Reports.—The Committee shall meet at the call of the Chairman or a majority of the Committee membership. The Committee Chairman shall report periodically the activities of the Committee to the Board of Commissioners.

ORGANIZATION ORDER NO. 145.—COMMITTEE ON SPECIAL EVENTS

Organization Ord. No. 145, 64–1133, Aug. 4, 1964, ordered that:

PART I

Purpose.—The purpose of the Committee shall be to assist the Commissioners by providing the coordinated planning of arrangements and services in connection with special events and ceremonies (conventions, parades, receptions, rallies, etc.), which by their nature do not logically fall within the jurisdicton of the welcoming committee established to coordinate ceremonies for visiting foreign dignitaries, yet which require the cooperation and participation of departments and agencies of the municipal government.

PART II

Functions.—The Committee shall:

(1) Determine what municipal services are required as each special event occurs.

(2) Plan and coordinate these municipal services among the District departments and agencies that will provide such services.

(3) Coordinate District Government plans with those of Federal agencies (i.e., National Park Service), when necessary.

(4) Advise the Commissioners as to the estimated cost of District services and recommended ways to meet such costs as are not covered by appropriated monies.

PART III

Composition.—The Committee shall consist of an Assistant Engineer Commissioner, who shall serve as permanent Chairman; the Directors of Public Health, General Administration, Highways and Traffic, Sanitary Engineering, Licenses and Inspections, and Buildings and Grounds; the Police Chief; the Fire Chief; and the Secretary to the Board of Commissioners; each serving ex officio and without additional compensation. Each member may designate an alternate to serve in his absence, and may utilize the services of staff of his Department in furthering the objectives of the Committee.

The Chairman may request the services of additional Department Heads, as necessary and appropriate, including participation on the Special Committee as temporary members, and the Heads of Departments are hereby authorized to provide such services to the extent of their capability.

PART IV

Meetings and Reports.—The Committee shall meet at the call of the Commissioners or at the call of the Chairman. Reports and recommendations of the Committee shall be forwarded to the Board of Commissioners for approval.

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap. Sec.
2A. Human Tissue Banks..... 2-251
4. Nurses and Physical Therapists..... 2-401
24. Security Agents and Brokers..... 2-2401

Chapter 1.—HEALING ARTS PRACTICE

Sec.
2-103. Commission on licensure—Creation—Seal.
2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.
2-141. Delegation of functions of "Commission"—Definition.

§ 2-103. Commission on licensure—Creation—Seal.

CODIFICATION

The second paragraph of this section as set out in the main volume of this code is comprised of section 5 of the act of Feb. 27, 1929, 45 Stat. 1327, ch. 352. Section 1 of the act of Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248 [set out in section 2-103a] amends section 5 by inserting (a) immediately before the first word of the section and by adding a subsection (b) thereto. For the sake of clarity it is deemed advisable to separate section 5, as amended, from this section of the Code and transfer it to section 2-103a in this supplement.

§ 2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.

(a) The Commission shall establish minimum standards of preprofessional and professional education in the healing art and may establish minimum standards for hospitals for interne training. It may determine whether preprofessional and professional schools, and whether hospitals, attain such standards. It shall keep a record of its investigations and determinations with respect to all schools and hospitals and shall approve and enter in a proper register every school and every hospital attaining the prescribed standard or which had attained such standard during its existence. The Commission may redetermine from time to time the standing of any school or hospital and may revise its register accordingly. The Commission shall give no credit for any certificate, diploma, or degree emanating from any school, and it may refuse to give any credit for any certificate or diploma emanating from any hospital, not duly registered as provided by this chapter: *Provided,* That this requirement as to registration shall not apply in the case of persons applying for license on years of practice under the provisions of section 2-120.

(b) Notwithstanding the requirements of the preceding subsection relating to registration, in the case of persons presenting evidence of graduation from a medical school or training in a hospital not located in the United States, the commission is authorized to accept certificates from the Educational Council for Foreign Medical Graduates or other organizations approved by (1) the American Medical Association, (2) the Association of American Medical Colleges, (3) the Federation of State Medical Boards, and (4) the American Hospital Association as being qualified to examine and evaluate the professional skill, training, and qualifications of graduates of foreign medical schools, such certificates to show that the applicants have successfully qualified under an American Medical Qualification Examination of such Educational Council for Foreign Medical Graduates, or an examination comparable in form and comprehensive coverage of subject matter to an American Medical Qualification Examination. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, § 5; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248, § 1.)

AMENDMENT

1961—Sec. 1, act Sept. 14, 1961, inserted (a) before the first word of the first paragraph and added subsection (b) thereto. The first paragraph is transferred from section 2-103 of the Code. See note to section 2-103.

§ 2-122. Evidence to be submitted with application—Licensing of those practicing before effective date of this chapter—Education and training.

Each applicant for a license to practice the healing art, to be issued after examination, shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has been graduated from a professional school registered under this chapter; with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this chapter; *Provided,* That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act, and if the commission shall so find, such applicant shall be admitted to examination: *Provided further,* That an applicant who has had the education and training required above, in preprofessional and professional schools, but whose graduation has been deferred by the professional school he last attended until after he has

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completed his training in a registered hospital, may be admitted to examination; but no license shall be issued to any such applicant until after he has been graduated from a registered school: *Provided further,* That an applicant for a license to be issued after examination who was graduated before February 27, 1929, by a school registered under this chapter may, if otherwise qualified, be admitted to examination upon proof by the applicant of such preprofessional and professional education and training, and of such graduation, as were required by the laws of the District of Columbia regulating the practice of medicine and surgery at the time of such graduation: *Provided further,* That an applicant for a license to practice osteopathy and surgery who has been graduated as aforesaid prior to December 31, 1930, shall be examined and licensed on showing that he was graduated by a high school acceptable to the Commission before he entered on the study of osteopathy and that he in all other respects is qualified as aforesaid for examination: *And provided further,* That an applicant for a license to practice drugless healing, who has been graduated before December 31, 1935, may be admitted to examination on proof that before entering on the study of drugless healing he was graduated by a high school acceptable to the Commission and that he in all other respects is qualified as aforesaid for examination, and was graduated by a school registered under this chapter, teaching the method of healing that he intends to follow, with a degree appropriate to that method of healing, after not less than three graded courses of resident study and training of at least six months each. After December 31, 1935, every such applicant shall be required to submit, before he is referred to an examining board for examination, evidence of not less than two years' education in a college acceptable to the Commission and not less than four graded resident courses of professional study of not less than nine months each, in the same manner and to the same extent as are required of other applicants for licenses to practice the healing art.

An applicant for a license to practice midwifery shall submit proof, satisfactory to the Commission, that before beginning the study of midwifery she had been graduated by a high school acceptable to the Commission and thereafter studied midwifery in a school of midwifery registered under this chapter, for at least two graded courses of six months each, including attendance of not less than twenty-five cases of labor, and was duly graduated by that school. (Feb. 27, 1929, 45 Stat. 1336, ch. 352, § 26; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87–248, § 2.)

AMENDMENT

1961—Section 2, act Sept. 14, 1961, amended section by (a) striking "studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this Act [this chapter], and has been graduated by such a school", and inserting in lieu thereof "been graduated from a professional school registered under this Act" [this chapter]; and (b) by inserting immediately after *"Provided,"* where it first appears in the section the following: "That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act [this chapter] at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act [this chapter], and if the commission shall so find, such applicant shall be admitted to examination: *Provided further,".*

The section as so amended is set out above.

§ 2–129. License may be refused for cause—Procedure—Attendance of witnesses before Commission—Review and appeal.

* * * * *

On the petition of an applicant to whom a license or registration has been denied by the commission by virtue of this section, the action of the commission may be reviewed by the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 2.)

AMENDMENT

1963—Section 2 of act Dec. 23, 1963, amended the seventh sentence of the section to read as above set out.

§ 2–131. Suspension or revocation of license upon conviction of felony—Appeal as supersedeas.

NOTES TO DECISIONS

1. Application for reinstatement

Determination of whether petitioner was fit to again practice medicine was not matter for court but for Commission on Licensure. *United States* v. *W. A. Goodloe* (1964, 228 F. Supp. 165).

Revocation by court of license of petitioner to practice medicine did not bar appropriate governmental agency from considering application for new license. *Id.*

Commission on Licensure had power, after court had revoked license of petitioner to practice medicine, to entertain and pass upon merits of application for restoration of right to practice medicine and no action of court was needed as a prerequisite. *Id.*

§ 2–141. Delegation of functions of "Commission"—Definition.

Wherever the term "commission" is used in this chapter, such term shall mean the office or agency to which the Board of Commissioners of the District of Columbia, pursuant to the authority contained in Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), has delegated or may from time to time delegate the functions required to be performed by this chapter. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 50, as added, Sept. 14, 1961, 75 Stat. 519, Pub. L. 87–248, § 3.)

Chapter 2A.—HUMAN TISSUE BANKS

Sec.

2–251. Statement of policy and purpose.
2–252. Definitions.
2–253. Tissue bank licenses and regulations.
2–254. Penalties.
2–255. Donation of tissue.
2–256. Tissue donations by those having right to body.
2–257. Persons entitled to the body.
2–258. Office of the Coroner.
2–259. Exemption of licensed undertakers and Anatomical Board.
2–260. Coordination of act with reorganization plan No. 5.

§ 2–251. Statement of policy and purpose.

Because of the rapid medical progress in the field of tissue preservation, tissue transplantation, and tissue culture, and because it is in the public interest to aid the development of this field of medicine, it is the policy and purpose of Congress in enacting this chapter and the amendments to sections 27–119a and 27–125 to encourage and aid the development of reconstructive medicine and surgery and the development of medico-surgical research by providing for the licensing and regulation of tissue banks, and by facilitating antemortem and postmortem authorizations for donations of tissue. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87–656, § 2.)

Popular Name

Act Sept. 10, 1962, provided that "This Act [set out as Title 2, Ch. 2A, and as amendments to sections 2-119a and 27–125] may be cited as the 'District of Columbia Tissue Bank Act'".

Cross References

For other applicable provisions relating to disposition of dead bodies, see §§ 2–201 to 2–209, and §§ 27–101 to 27–131.

§ 2–252. Definitions.

For the purposes of this chapter and sections 27–119a and 27–125, except where the context indicates a different meaning—

"Commissioners" means the Commissioners of the District of Columbia or their designated agent.

"Donor" means any person who, in accordance with the provisions of this chapter and sections 27–119a and 27–125, bequeaths or donates his tissue for removal after death in furtherance of the purposes of this chapter and section 27–119a and 27–125, and also means any deceased person whose tissue is donated or disposed of for the purpose of this chapter and sections 27–119a and 27–125.

"Tissue" means any portion of the body of a dead human.

"Tissue bank" means a facility for procuring, removing, and disposing of portions of bodies of dead humans for the purposes of reconstructive medicine and surgery, and research and teaching in reconstructive medicine and surgery. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87–656, § 3.)

§ 2–253. Tissue bank licenses and regulations.

(a) No person shall operate any tissue bank in the District of Columbia without a valid license issued pursuant to this chapter and sections 27–119a and 27–125. No such license shall be issued except to persons duly licensed or duly registered as physicans under the Healing Arts Practice Act of the District of Columbia or to persons holding valid licenses to operate and maintain hospitals for humans pursuant to the Act entitled "An Act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia", approved April 20, 1908.

(b) The Commissioners are authorized, after public hearing, to adopt and promulgate rules and regulations prescribing, without limitation, (1) the terms and conditions under which a tissue bank license may be issued and renewed; (2) the fees to be paid for the issuance and renewal of such licenses; (3) the duration of such licenses; (4) the grounds for suspension and revocation of such licenses; (5) the operation of tissue banks; (6) the conditions under which tissue may be processed, preserved, stored, and transported; and (7) the making, keeping, and disposition of records by tissue banks or by other persons processing, preserving, storing, or transporting tissue.

(c) The Commissioners may, after notice and hearing, deny, suspend, or revoke any tissue bank license issued or applied for pursuant to this chapter and sections 27–119a and 27–125.

(d) Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any tissue bank license or renewal thereof, issued or applied for under this chapter and sections 27–119a and 27–125, may obtain a review of such decision or order in the municipal court of appeals for the District of Columbia, and may seek review by the United States Court of Appeals for the District of Columbia of any judgment of the municipal court of appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11–772.

(e) Except with respect to the provisions as to licensing, the provisions of this chapter and sections 27–119a and 27–125, and the regulations made pursuant thereto, shall apply to Federal agencies situated in the District of Columbia, and to District of Columbia agencies. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87–656, § 4.)

Effective Date

Section 14 of act Sept. 10, 1962, provides, "This Act [set out as Title 2, Chapter 2A, and sections 27–119a and 27–125] except section 4 [2–253] shall take effect upon approval. Section 4 [2–253] shall take effect 60 days after the Commissioners have initially promulgated regulations pursuant to such section."

References in Text

The Healing Arts Practice Act of the District of Columbia is set out as chapter 1 in Title 2 of the D.C. Code and the act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia approved Apr. 20, 1908, is set out in sections 32–301 to 32–305.

Change of Name

Act Oct. 23, 1962, Pub. L. 87–873, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

Act Oct. 23, 1962, Pub. L. 87–873, section 6, eff. Jan. 1, 1963, changed the name of the Municipal Court of Appeals for the District of Columbia, to "District of Columbia Court of Appeals".

Internal Reference

Section 11–772, referred to in text is now covered by sections 11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.

§ 2–254. Penalties.

Any person violating any provision of this chapter and the amendments to sections 27–119a and 27–125, or any regulation made pursuant to this chapter and the amendments to sections 27–119a and 27–125, shall be fined not more than $300, or be imprisoned for not more than ninety days. Prosecution for violations of this chapter and the amendments to sections 27–119a and 27–125 and regulations made pursuant thereto shall be brought in the name of

the District of Columbia. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87–656, § 5.)

§ 2–255. Donation of tissue.

(a) Any person who, under the law of the District of Columbia, has capacity to make a valid will, may by will, codicil, or any written statement donate his tissue for the purposes of this chapter and sections 27–119a and 27–125. Any person who, in accordance with this chapter and sections 27–119a and 27–125, donates his tissue may, but shall not be required to, designate the purpose for which his tissue is to be used. Any physician or hospital validly operating a tissue bank shall have full authority to take the tissue so donated and use the same for the purposes enumerated in this chapter and section 27–119a and 27–125.

(b) No particular words shall be required for such person to donate his tissue, but any will, codicil, or written statement shall be liberally construed to effectuate the intent and purpose of the person desiring to donate his tissue for any purpose authorized by this chapter and sections 27–119a and 27–125. If, pursuant to this section or section 2–256, a person donates tissue by a written statement other than by a will or codicil, such statement shall be signed by him and be witnessed by two persons of legal age.

(c) A provision in any will, codicil, or written statement which donates tissue as provided by this chapter and sections 27–119a and 27–125 shall become effective immediately upon the death of the testator or donor, and shall constitute the authority for any physician or hospital validly operating a tissue bank to remove said tissue. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87–656, § 6.)

§ 2–256. Tissue donations by those having right to body.

Any person having the right to a body for the purpose of burial may by a written statement donate any tissue from such body to any tissue bank, and in such written statement may designate the purpose or purposes for which such tissue is to be used. Such writing shall constitute full authority for the tissue bank to use such tissue for the purposes of this chapter and sections 27–119a and 27–125. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 7.)

§ 2–257. Persons entitled to the body.

For the purposes of this chapter and the amendments to section 27–119a and 27–125, the order of priority in which persons are entitled to the body for burial and who may donate tissue therefrom shall be the following:

(a) The surviving spouse.

(b) If there be no surviving spouse, or if the surviving spouse is incompetent, unavailable, or does not claim the body for burial, then an adult child, a parent, an adult brother, or an adult sister of the decedent. Any one of such persons may make such donation: *Provided,* That tissue shall not be removed pursuant to a donation made by any one of such persons designated in this subsection if, before such tissue is removed, any one of such persons shall, in writing, notify the tissue bank which is to remove the tissue that he objects to such removal.

(c) Any person whom the deceased during his lifetime designated by written instrument to take charge of his body for burial.

(d) The person or agency who or which assumes custody of the body for burial, in any case in which the person designated as provided in paragraph (c) or all of the persons mentioned in paragraph (a) or (b) of this section have failed to claim the body. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 8.)

§ 2–258. Office of the Coroner.

(a) The Commissioners are authorized to appoint such number of licensed physicians as they deem appropriate to perform such of the functions of the Coroner of the District of Columbia as the Commissioners shall prescribe. The Commissioners are authorized to fix the compensation of such physicians at a rate or rates not in excess of the per diem equivalent of the maximum rate for grade 18 of the General Schedule of the Classification Act of 1949, as amended. The Commissioners are further authorized, in their discretion, to accept the services of such physicians without compensation.

(b) The Coroner of the District of Columbia may, in his discretion, allow tissue to be removed from any dead human body in his custody or under his jurisdiction: *Provided,* That such tissue removal shall not interfere with other functions of the Office of the Coroner: *Provided further,* That the person who, in accordance with section 2–257, is entitled to the body for burial, shall first authorize such tissue removal. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 9.)

Reference in Text

The Classification Act of 1949 is classified generally to Chapter 21, Title 5, U.S. Code.

Cross References

For other provisions relating to the Coroner, see sections 11–1201 to 11–1208 and 1 App., Reorg. Ord. No. 51.

§ 2–259. Exemption of licensed undertakers from act.

Nothing in this chapter and sections 27–119a and 27–125 shall be construed (1) to prohibit undertakers licensed pursuant to section 47–2344a from discharging their duties, or (2) to prohibit or affect in any way the authority, duties, rights, or obligations vested, imposed, or granted by the Act entitled "An Act for the promotion of anatomical science and to prevent the desecration of graves in the District of Columbia", approved April 29, 1902. (Sept. 10, 1962, 76 Stat. 537, Pub. L. 87–656, § 12.)

Reference in Text

The act for the promotion of anatomical science, etc., approved Apr. 29, 1902, is set out in Title 2, chapter 2, of the D.C. Code.

§ 2-260. Coordination of act with reorganization plan No. 5.

Nothing in this chapter and sections 27-119a and 27-125 shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter and sections 27-119a and 27-125 in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 13.)

REFERENCE IN TEXT

Reorganization Plan No. 5 of 1952, referred to in text, is set out in the Appendix to Title I.

Chapter 3.—DENTISTS

Sec.
2-324. Dental hygienists—Examination—License—Form and execution—Registration—Waiver of theoretical examination.

§ 2-309. License—Form and execution—Registration—Duplicate licenses.

TRANSFER OF FUNCTIONS

The functions of the Health Officer [Now known as Director of Public Health] relative to the registration of dentists were transferred to the Director of the Department of Occupations and Professions on Jan. 21, 1964, by subsection F of part VII of Organization Order No. 59 set out in the appendix to Title I.

§ 2-324. Dental hygienists — Examination — License — Form and execution—Registration—Waiver of theoretical examination.

An applicant for a license as dental hygienist shall appear before the Board at its first examination after the filing of his application and pass a satisfactory examination consisting of practical demonstrations and written or oral tests on such subjects as the board may direct. If such applicant passes the examination and is of good moral character, he shall receive a license from the board, attested by its seal, signed by the members of the Board, which after being registered with the director of public health shall be conclusive evidence of his right to practice as a dental hygienist in the District of Columbia according to the provisions of this chapter. The Board of Dental Examiners may, in its discretion, waive the theoretical examination and issue a license to any applicant who holds a certificate from the National Board of Dental Examiners: *Provided,* That such applicant shall pass a practical examination given by the Board of Dental Examiners: *Provided further,* That in exercising its discretion to waive theoretical examinations the Board of Dental Examiners shall satisfy itself that the examination given by the National Board of Dental Examiners was as comprehensive as that required in the District of Columbia. (July 2, 1940, 54 Stat. 722, ch. 513, § 24; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Aug. 20, 1964, 78 Stat. 558, Pub. L. 88-460, § 1.)

AMENDMENTS

1964—Act Aug. 20, 1964, amended the section by adding the last sentence thereto.

AUTHORITY OF COMMISSIONERS NOT AFFECTED BY ACT OF AUG. 20, 1964

Section 2 of act Aug. 20, 1964, provided as follows:

"The foregoing amendment [Act. Aug. 20, 1964] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this amendatory Act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

Chapter 4.—NURSES AND PHYSICAL THERAPISTS

SUBCHAPTER III.—PHYSICAL THERAPISTS

Sec.
2-451. Definitions.
2-452. Exemption from registration.
2-453. Registration.
2-454. Powers of Commissioners.
2-455. Establishment of Board.
2-456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.
2-457. Registration of qualified applicants—Issuance of certificates.
2-458. Registration without examination.
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2-460. Reciprocity.
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2-463. Court review.
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2-468. Fees and charges—Public hearings to change fees.
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2-470. Appropriations.
2-471. Reorganization.
2-472. Effective date.

SUBCHAPTER I.—REGISTERED NURSES

§ 2-404. Registration — Application — Requirements—Registration of training schools.

Every nurse desiring to register in the District of Columbia shall make application to the Nurses' Examining Board for examination and registration and at the time of making such application shall pay to the treasurer of said Board $15. Said applicant must furnish satisfactory evidence that she is over nineteen years of age, or that she will attain the age of nineteen years within six months after the date fixed for the necessary examination to be held by said Board after the date of such application. Except as otherwise provided in this subchapter, an applicant shall not be registered unless she has passed an examination by the Nurses' Examining Board. No nurse shall be registered in the District of Columbia who has not attained the age of nineteen years. Said applicant must also furnish satisfactory evidence of good moral character, and further that she holds a

diploma from training school for nurses which has been registered by the Nurses' Examining Board of the District of Columbia: *Provided, however,* That no training school shall be registered which does not maintain proper educational standards and give not less than two years' training in a general hospital, or in a special hospital with adequate affiliations, all of which shall be determined by the Nurses' Examining Board. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 4; Mar. 2, 1929, 45 Stat. 1520, ch. 540, § 4; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 1; July 30, 1963, 77 Stat. 114, Pub. L. 88–81, § 1.)

AMENDMENTS

1963—Act July 30, 1963, amended the section by striking "twenty-one" wherever the same appears and inserting in lieu thereof, "nineteen". This amendment reduces the age limitation from "twenty-one' to "nineteen".

§ 2–406. Annual registration—Nurses—Training schools—Cancellation by failure to register—Restoration.

* * * * *

On the petition of an applicant to whom registration or reregistration has been denied by the nurses' examining board, the action of the board may be reviewed by the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 3.)

AMENDMENT

1963—Section 3 of act Dec. 23, 1963, amended the section by striking the colon at the end of the first proviso and changing it to a period and striking out the second proviso and inserting in lieu thereof the matter above set out starting with the words "On the petition".

SUBCHAPTER II.—PRACTICAL NURSES

§ 2–425. Commissioners authorized to delegate functions.

TRANSFER OF FUNCTIONS

Reorganization Order No. 59 of the Board of Commissioners, dated June 30, 1953, as amended, established within the Department of Occupations and Professions, a Practical Nurses' Examining Board. There was delegated to said Examining Board the technical and professional functions vested in the Commissioners by sections 2–427 to 2–431 and section 2–433. The administrative functions authorized to be performed by such sections were delegated to the Director. The functions of adopting and prescribing rules and regulations were reserved to themselves by the Commissioners. The order is set out in the appendix to title 1.

§ 2–429. Conditions for issuance of license without written examination.

NOTES TO DECISIONS

Application under "grandfather clause" 1
Experience requirement 2
Findings of fact 3
Timeliness of petition 4

1. Application under "grandfather clause"

Even though statute did not in express terms require that formal hearing be held when application for license as practical nurse was made under "grandfather clause", an application which substantially complied with statutory provisions could not be denied unless applicant had clear opportunity to meet Board's challenge to her qualifications and unless court was apprised of basis of finding against applicant; and while procedure of Board could be informal, it would have to conform to recognized standards of fairness, and record would have to be made which would permit review of Board's action by court. *C. Corbett* v. *L. Kinlein et al.* (D.C. App. 1963, 191 A. 2d 246).

2. Experience requirement

The statement of practical nurses' examining board that 9 months' nursing experience satisfied the 1-year experience requirement for issuance of license did not provide reasonable basis in law for board's decision denying license to one who had almost 7 months' experience. *M. E. Matheson* v. *Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

3. Findings of fact

Where an informal hearing is held and practical nurses' examining board denies application for license, there can be judicial review only if board has made findings of fact and has applied the regulations to such facts and has issued an order based on facts and regulations. *M. E. Matheson* v. *Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

4. Timeliness of petition

Petition to review practical nurses' examining board's denial of application for license was timely filed within court rule requiring petition for review to be filed within 15 days of formal notice of final order or decision of a board or commission, where petitioner had no formal notice after February 19 informal meeting that her application had been rejected, petitioner's alternative ground for granting license was rejected in board's letter of April 29, and petition for review was filed on May 10. *M. E. Matheson* v. *Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

§ 2–434. Review of orders and decisions of Commissioners.

INTERNAL REFERENCE

Section 11–772, referred to in text is now covered by sections 11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.

SUBCHAPTER III.—PHYSICAL THERAPISTS

§ 2–451. Definitions.

As used in this subchapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board, or their authorized agent or agents.

(b) The word "she" and the derivatives thereof shall be construed to include the word "he" and the derivatives thereof.

(c) The term "physical therapy" means the treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific scientific application of physical measures to secure the functional rehabilitation of the human body. Nothing in this subchapter shall be construed as authorizing a physical therapist, whether registered or not, to practice medicine, osteopathy, chiropractic, naturopathy, or any other form or method of healing.

(d) The term "physical therapist" means a person who practices physical therapy under the prescription, supervision, and direction of a person licensed to practice under the Healing Arts Practice Act of the District of Columbia, approved February 27, 1929 (45 Stat. 1326), as amended.

(e) The word "State" or "States" shall be deemed to include any territory of the United States and the Commonwealth of Puerto Rico. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87–280, § 2.)

REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia, referred to in the text, is set out in title 2, ch. 1, of the D.C. Code.

EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering this subchapter, see section 2–472.

SHORT TITLE

Section 1 of act Sept. 22, 1961, provided that: "This Act [this subchapter] may be cited as the 'Physical Therapists Practice Act' ".

§ 2–452. Exemption from registration.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof while such person is acting in the discharge of her official duties. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87–280, § 3.)

EFFECTIVE DATE

See section 2–472.

§ 2–453. Registration.

(a) No person shall practice physical therapy in the District of Columbia unless (1) she is duly registered in accordance with the provisions of this subchapter, or (2) is exempted from such registration by the terms of this subchapter.

(b) No person not registered in accordance with the provisions of this subchapter, unless exempted from registration by the terms of this subchapter, shall, directly or indirectly, (1) represent herself to be so registered or (2) represent herself to be certified, licensed, or authorized to practice physical therapy.

(c) No person shall use in connection with her name the words "physical therapist", "physiotherapist", "physical therapy technician", or use the initials "P.T.", "P.T.T.", "R.P.T.", or any other letters, words, abbreviations, or insignia indicating or implying that she is a registered physical therapist, unless such person is a holder of a valid registration under this subchapter.

(d) Nothing in this section shall prohibit any person duly licensed or registered in the District of Columbia under any other Act from engaging in the practice for which she is duly registered or licensed.

(e) Nothing in this subchapter shall apply to any person licensed under the Healing Arts Practice Act of the District of Columbia, nor to any employee of any such person working under his immediate supervision and direction in his private office, provided no such employee shall hold herself out, or otherwise represent herself to be a physical therapist. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87–280, § 4.)

REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out in title 2, ch. 1, of the D.C. Code.

EFFECTIVE DATE

See section 2–472.

§ 2–454. Powers of Commissioners.

The Commissioners are hereby vested with full power and authority to delegate, from time to time, to their designated agent or agents, any of the functions vested in them by this subchapter. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 5.)

EFFECTIVE DATE

See section 2–472.

§ 2–455. Establishment of board.

The Commissioners may establish a physical therapists examining board to perform any of the functions vested in the Commissioners by this subchapter, and, if so established, such board shall be composed of such persons possessing such qualifications as the Commissioners shall determine. The Commissioners are authorized to prescribe the terms of office of members of such board and to fix the compensation of such members. The Commissioners may appoint as members of such board, Federal and District government employees, and such members shall not be entitled to receive compensation as board members, and any such member shall not be debarred by such membership from employment in the Federal or District governments not inconsistent with her duties as a board member. Any board member may receive her compensation as a board member as well as any retirement pay, retirement compensation, or annuity to which she may be entitled on account of previous service rendered to the United States or the District of Columbia governments. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 6.)

EFFECTIVE DATE

See section 2–472.

§ 2–456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.

(a) The Commissioners are authorized to adopt from time to time and prescribe such rules and regulations as may be necessary to enable them to carry into effect the provisions of this subchapter. The Commissioners shall maintain a register of all persons registered as physical therapists. The Commissioners shall maintain a register of approved schools which they deem afford adequate training in physical therapy.

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the municipal court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11–756(c). (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 7.)

CHANGE OF NAME

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions."

EFFECTIVE DATE

See section 2–472.

§ 2–457. Registration of qualified applicants—Issuance of certificates.

The Commissioners shall register as physical therapists all applicants who prove to the satisfaction of the Commissioners their fitness for registration under the terms of this subchapter. The Commissioners shall issue to each person registered a certificate of registration, which shall be prima facie evidence of the right of the person to whom it is issued to represent herself as a registered physical therapist, and authorized to practice as such under this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 8.)

EFFECTIVE DATE

See section 2–472.

§ 2–458. Registration without examination.

The Commissioners shall register as a physical therapist, without examination, any physical therapist who is at least twenty years of age and of good moral character and who presents evidence satisfactory to the Commissioners that she was, prior to the effective date of this subchapter, practicing physical therapy in the District of Columbia for a period of two years immediately preceding the effective date of this subchapter, and that she (1) has graduated from an approved school of physical therapy listed in the register of approved schools or (2) received comparable training or experience in the practice of physical therapy as determined by the Commissioners. Application for registration under this section shall be made on or before the expiration of one year from the effective date of this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 9.)

EFFECTIVE DATE

See section 2–472.

§ 2–459. Registration after examination.

The Commissioners shall pass upon the qualifications of applicants for registration, provide for and conduct all examinations, determine which applicants have successfully passed the examination and duly register such applicants. To be eligible to be examined for registration as a physical therapist, an applicant must meet the following requirements:

(a) Be at least twenty years old.

(b) Be of good moral character.

(c) Be in good physical and mental health, as certified by a physician licensed to practice in the District of Columbia.

(d) Be a graduate of an approved school of physical therapy listed in the register of approved schools; or possess comparable educational qualifications as determined by the Commissioners.

The examinations specified in this section shall be conducted at such times and places as the Commissioners may determine, and notice of time and place of such examination shall be published not less than thirty days before the first day of each examination in one or more newspapers of local circulation.

The examination shall embrace such coverage of the following subjects to determine the applicant's qualification: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, physics; "physical therapy" as defined in this subchapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of "physical therapy" as defined in this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 10.)

EFFECTIVE DATE

See section 2–472.

§ 2–460. Reciprocity.

Any applicant who has practiced physical therapy and has been registered, certified, or licensed as such in any State may, upon proof of good moral character, be registered without examination, provided the applicant has graduated from a school of physical therapy approved by the Commissioners, or has received competent comparable training as determined by the Commissioners. It is intended that the standards of education and training required for registration under this section shall be substantially equivalent to those required for registration pursuant to section 2–459. This section shall be construed to apply only to candidates from States which admit registered physical therapists of the District of Columbia without examination. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 11.)

EFFECTIVE DATE

See section 2–472.

§ 2–461. Renewal of registration—Nonpracticing therapists.

(a) Every registered physical therapist engaged in or who proposes to engage in the practice of physical therapy in the District of Columbia is hereby required to register with the Commissioners annually. Any registrant who allows her registration to lapse by failing to renew the registration annually may be reinstated by the Commissioners by showing cause satisfactory to the Commissioners for such failure and upon payment of all required fees. The Commissioners are authorized, after public hearing, to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Commissioners. Upon receipt of such notice, the Commissioners shall place the name of such person upon the nonpracticing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold herself out as a registered physical therapist nor practice as such in the District of Columbia. Application for renewal of registration and payment of renewal fee for the current year shall be made to the Commissioners by any such person desiring to resume practice as a registered physical therapist. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87–280, § 12.)

EFFECTIVE DATE

See section 2–472.

§ 2–462. Denial, revocation, and suspension of registration.

The Commissioners are authorized and empowered to deny, revoke, or suspend any registration or

certificate of renewal of registration issued by the Commissioners or applied for in accordance with the provisions of this subchapter if the applicant or holder thereof—

(1) has been guilty of fraud or deceit in procuring or attempting to procure any registration or renewal thereof provided for in this subchapter;

(2) has been convicted of a crime involving moral turpitude;

(3) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;

(4) has been guilty of unprofessional conduct;

(5) has willfully violated any of the provisions of this subchapter, or rules or regulations promulgated by the Commissioners pursuant to authority contained in this subchapter;

(6) is mentally incompetent;

(7) is guilty of undertaking to treat ailments of human beings other than by physical therapy as authorized by this subchapter, or the undertaking to practice physical therapy independent of the prescription and direction of a person appropriately licensed to practice under the Healing Arts Practice Act of the District of Columbia; or

(8) is otherwise professionally incapacitated.

Provided, That such denial, revocation, or suspension shall be made only upon specific charges in writing. A copy of any such charges and at least ten days' notice of the hearing of the same shall be mailed to the holder of or applicant for such registration, addressed to her at her last known address. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87–280, § 13.)

Reference in Text

The Healing Arts Practice Act of the District of Columbia referred to in text is set out in title 2, ch. 1, of the D.C. Code.

Effective Date

See section 2–472.

§ 2–463. Court review.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any registration, or renewal of registration, issued or applied for under this subchapter may obtain a review thereof in the municipal court of appeals for the District of Columbia, and may seek a review by the United States Court of Appeals for the District of Columbia Circuit of any judgment of the municipal court of appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11–772. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 14.)

Change of Name

Act Oct. 23, 1962, Pub. L. 87–873, section 6, eff. Jan. 1, 1963, changed the name of the Municipal Court of Appeals for the District of Columbia, to "District of Columbia Court of Appeals".

Effective Date

See section 2–472.

Internal Reference

Section 11–772, referred to in text is now covered by sections 11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.

§ 2–464. Unauthorized practice of physical therapy.

It shall be unlawful for any person in the District of Columbia to—

(a) sell or fraudulently obtain or furnish any diploma, license, certificate of registration, or record required by this subchapter, or required by the Commissioners under authority of this subchapter, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;

(b) practice physical therapy under cover of any diploma, certificate of registration, or record required by this subchapter or required by the Commissioners under authority of this subchapter, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent registration;

(c) use in connection with her name any designation tending to imply that she is a registered physical therapist unless duly registered under provisions of this subchapter;

(d) practice physical therapy during the time her registration shall be suspended or revoked. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 15.)

Effective Date

See section 2–472.

§ 2–465. Practice of registered physical therapists.

A person registered under this subchapter as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person duly licensed or registered under the Healing Arts Practice Act of the District of Columbia. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 16.)

Reference in Text

The Healing Arts Practice Act of the District of Columbia, is set out in title 2, ch. 1, of the D.C. Code.

Effective Date

See section 2–472.

§ 2–466. Enforcement—Penalties.

Any person who shall violate the provisions of section 2–453, 2–464, or 2–465 of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding $500 or by imprisonment for not more than one year, or both. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 17.)

Effective Date

See section 472.

§ 2–467. Conduct of prosecutions.

(a) Prosecutions for violations of any provisions of section 2–453, 2–464, or 2–465 of this subchapter shall be conducted in the name of the District of Columbia in the municipal court for the District of Columbia, by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 18.)

Change of Name

Act Oct. 23, 1962, Pub. L. 87–873, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the

District of Columbia to "District of Columbia Court of General Sessions".

EFFECTIVE DATE

See section 2–472.

§ 2–468. Fees and charges—Public hearings to change fees.

(a) The Commissioners are authorized and empowered, after a public hearing, to fix and, from time to time increase or decrease, fees for any services rendered under this subchapter. The Commissioners shall, pursuant to this section, increase, decrease, or fix fees in such amounts as will, in the judgment of the Commissioners, approximate the costs to the District of Columbia of administering this subsection: *Provided,* That no fee shall be increased, decreased, or fixed except after a public hearing.

(b) Upon the change of a registration period as authorized by subsection (a) of section 2–461 the fee for registration or renewal of registration shall be prorated on the basis of the time covered.

(c) All moneys collected for fees and charges made pursuant to authority contained in this subchapter shall be paid into the Treasury to the credit of the District of Columbia. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 19.)

EFFECTIVE DATE

See section 2–472.

§ 2–469. Severability.

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the subchapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 20.)

EFFECTIVE DATE

See section 2–472.

§ 2–470. Appropriations.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering and carrying out the purposes of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 21.)

EFFECTIVE DATE

See section 2–472.

§ 2–471. Reorganization.

Nothing in this subchapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 22.)

EFFECTIVE DATE

See section 2–472.

§ 2–472. Effective date.

This subchapter shall take effect one hundred and twenty days after funds are appropriated for the purpose of administering the provisions of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 23.)

Chapter 6.—PHARMACY

§ 2–606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in District of Columbia Court of Appeals—Public display of license.

* * * * *

The board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the board's finding is adverse to the person seeking reissuance of his license or permit, the license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code.

* * * * *

(As amended Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 4.)

AMENDMENTS

1963—Section 4 of act Dec. 23, 1963, amended the fourth paragraph of the section to read as above set out. It also struck out the fifth paragraph of the section.

Chapter 7.—PODIATRY

§ 2–717. Practicing without a license—Violation of law—Penalties.

NOTES TO DECISIONS

Judicial involvement 1
Purpose of statute 2
Separate prosecutions 3

1. Judicial involvement

Court's lengthy interrogation of defendant charged with practicing podiatry without license did not exceed permissible limits of judicial involvement. *T. DeW. Baldwin* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

2. Purpose of statute

Podiatry statute was enacted to protect public by assuring that those who hold themselves out as podiatrists have attained specified level of professional competence and one who fails to submit himself to scrutiny of Board of Podiatry Examiners must be considered unfit to practice podiatry, regardless of his claimed qualifications. *T. DeW. Baldwin* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

3. Separate prosecutions

District of Columbia's healing arts practice statute permits separate prosecution of isolated acts of treatment. *T. DeW. Baldwin* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

Each act of treatment by one practicing podiatry without license may be prosecuted as separate offense. *Id.*

Chapter 8.—VETERINARIANS

§ 2–810. Revocation of licenses—Causes—Procedure—Appeals—Costs.

* * * * *

Appeal from the decision of the board may be taken to the District of Columbia Court of Appeals, as provided by section 11–742, 17–303, 17–304, 17–305 (b), 17–306 and 17–307 of the District of Columbia

Code. The Commissioners of the District of Columbia, the board of review, and the board of examiners in veterinary medicine shall not, nor shall any of them, be required to pay costs, or give bond or security on appeal, or other proceeding in any court of the District of Columbia growing out of any official duty imposed on them, or any of them, by this chapter. (As amended Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 5.)

AMENDMENT

1963—Section 5 of act Dec. 23, 1963, amended the third sentence of the section to read as above set out.

Chapter 10.—ARCHITECTS

§ 2–1028. Procedure for revocation—Appeal.

The proceedings for the annulment of registration, that is, the revocation of a certificate, shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects by the Board itself or by a complainant. A copy of the charges, together with a notice of the time and place of hearing, shall be served on the accused at least thirty calendar days in advance of the hearing, which shall be postponed if necessary to give the requisite notice. Where personal services can not be made within the District of Columbia, service may be made by publication or personal service in accordance with such rules as the Board adopts, following generally and in principle the provisions of sections 13–336 to 13–338 and 13–340 of the District of Columbia Code. At the hearing, the accused may be represented by counsel, may introduced evidence, and may examine and cross-examine witnesses. The secretary of the Board may administer oaths. The Board shall make a written report of its findings, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the Board's finding is adverse to the accused, his certificate of registration shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 6.)

AMENDMENT

1963—Section 6 of act Dec. 23, 1963, amended the section to read as above set out.

Chapter 11.—BARBERS

§ 2–1110. Refusal to issue, renew, or restore certificate—Revocation—Appeal.

* * * * *

An appeal may be taken from the action of the Board to the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 7.)

AMENDMENT

1963—Section 7 of act Dec. 23, 1963, amended the second paragraph of the section to read as above set out.

Chapter 12.—BOXING COMMISSION

§ 2–1226. Compensation of Commissioners not affected by other income.

Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of the Commission may receive the compensation authorized by this chapter to be paid to such member, as well as any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia governments, subject to section 201 of the Dual Compensation Act. (Aug. 19, 1950, 64 Stat. 466, ch. 762, § 2; Aug. 19, 1964, 78 Stat. 489, Pub. L. 88–448, title IV, 401(a).)

REFERENCE IN TEXT

Section 201 of the "Dual Compensation Act" is a part of Act of Aug 19, 1964, Pub. L. 88–448. For provisions of section see 5 U.S. Code 3102.

AMENDMENTS

1964—Section 401(a) of act Aug. 19, 1964, amended section by inserting at the end thereof the words "subject to section 201 of the Dual Compensation Act."

EFFECTIVE DATE OF AMENDMENT

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall becom effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

Chapter 14.—PLUMBERS

§ 2–1405. License—Renewal, fee, revocation.

NOTES TO DECISIONS

2. Immediate personal supervision

Administrative interpretation, by District of Columbia plumbing board secretary, that code provision requiring that plumbing work be done under a licensed plumber's immediate personal supervision did not necessitate his physical presence on the site was not clearly wrong and would be entitled to due respect of court interpreting the provision. *G. A. Cook* v. *James E. Griffith, Inc.* (D.C. App. 1963, 193 A. 2d 427).

Alleged failure of duly licensed corporation engaged in plumbing business to perform plumbing work in accordance with code provision requiring that all work by unlicensed persons be done under the immediate supervision of a licensed plumber did not relieve the contractor, which had engaged the corporation, from liability for the plumbing job which was otherwise properly performed. *Id.*

Chapter 17.—ARMORY BOARD

SUBCHAPTER I.—GENERAL PROVISIONS

§ 2–1709. Employment of manager and personnel—Compensation—Managerial powers.

The Armory Board is authorized to employ and fix the compensation and term of a manager and such personnel as may be necessary in connection with the operation of the armory for the secondary purposes of this subchapter without regard to the provisions of the civil-service laws and Classification Act of 1949, as amended. Under the direction of the Board and with written authorization signed by the members thereof, said manager may exercise such of the powers vested in the Board by section 2–1706 as the Board shall determine. (June 4, 1948,

60 Stat. 342, ch. 418, § 9; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Aug. 19, 1964, 78 Stat. 494, Pub. L. 88–448, title IV, § 402(a)(27).)

EFFECTIVE DATE OF PARTIAL REPEAL

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(b) shall become effective on the date of enactment of this Act."

PARTIAL REPEAL

Section 402(a)(27) repealed that portion of the section which reads as follows: "and without regard to any prohibition against double salaries continued in any other law."

Chapter 18.—PROFESSIONAL ENGINEERS

§ 2–1810. Exemptions.

NOTES TO DECISIONS

Burden of proving exception 1
Practice of engineering by corporation 2

1. Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

2. Practice of engineering by corporation

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

§ 2–1814. Penalties.

NOTES TO DECISIONS

Burden of proving exception 1
Practice of engineering by corporation 2
Violation question of fact 3

1. Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

2. Practice of engineering by corporation

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc.*, v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

3. Violation question of fact

Question whether use of name "T.V. Engineers Inc.," by corporation which employed no professional engineers, violated provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered, was factual determination for trial court. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961. 166 A. 2d 920).

Chapter 20.—PAWNBROKERS

§ 2–2001. Definitions.

CROSS REFERENCE

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see § 28:9–203.

Chapter 24.—SECURITY AGENTS AND BROKERS

Sec.
2–2401. Definitions.
2–2402. Fraud.
2–2403. License requirement.
2–2404. License procedure.
2–2405. Unlawful representation concerning licensing.
2–2406. Records and reports.
2–2407. Filing of sales and advertising literature.
2–2408. Misleading filings.
2–2409. Denial, revocation, suspension, cancellation, and withdrawal of license.
2–2410. Investigations and subpenas.
2–2411. Injunctions.
2–2412. Criminal penalties.
2–2413. Civil liabilities.
2–2414. Scope of chapter and service of process.
2–2415. Administration of chapter.
2–2416. Advisory committee.
2–2417. Severability.
2–2418. Change of name of Public Utilities Commission.

§ 2–2401. Definitions.

When used in this chapter, unless the context otherwise requires—

(a) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include any individual who represents an issuer in (1) effecting transactions in an exempt security, (2) effecting exempt transactions, or (3) effecting transactions with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in the District. A partner, officer, or director of a broker-dealer or issuer, or a person occupying similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(b) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in the District if (A) he effects transactions in the District exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies, as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into the District in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in the District.

(c) "Commission" means the Public Service Commission of the District of Columbia as so designated by section 2–2418.

(d) "District" means the District of Columbia, either as a territorial area as defined in section 1–101, or as the government and municipal corporation of that name as created by section 1–102, depending on the context.

(e) For the purpose of subsection (a) of this section "exempt security" means—

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any State, any political subdivision of a State, the District, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) any security issued or guaranteed by Canada, any Canadian Province, any political subdivision of any such Province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any State;

(4) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewals of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; or

(5) any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(f) For the purpose of subsection (a) of this section "exempt transaction" means—

(1) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or any transaction among underwriters;

(2) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(3) any transaction by a receiver or trustee in bankruptcy;

(4) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons in the District during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in the District, if the seller reasonably believes that all the buyers in the District are purchasing for investment;

(6) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and (B) the number of subscribers does not exceed twenty-five, and (C) no payment is made by any subscriber;

(7) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transactions are holders of convertible securities, nontransferable warrants, or transferable warrants, exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the District, or (B) the issuer first files a notice specifying the terms of the offer and the Commission does not by order disallow the exemption within the next five full business days; or

(8) any transaction effected with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in the District.

(g) "Fraud", "deceit", and "defraud" shall not be limited to common law deceit.

(h) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(i) "Issuer" means any person who issues or proposes to issue any security, except that—

(1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

(2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer".

(j) "Person" means an individual, a corporation, a partnership, an association, joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(k)—

(1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of any offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities

or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(l) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period or any contract issued by an insurance company pursuant to section 35–541.

(m) "State" means any State, territory, or possession of the United States, and the Commonwealth of Puerto Rico, but not the District of Columbia. (Aug. 30, 1964, 78 Stat. 620, Pub. L. 88–503, § 2.)

REFERENCE IN TEXT

The Investment Company Act of 1940 referred to in text is set out in Title 15 U.S.C., sections 80a–1 to 80a–52.

EFFECTIVE DATE

See note to section 2–2402.

POPULAR NAME

Section 1 of act Aug. 30, 1964, provides as follows: "This Act [This chapter and the amendment of section 11–742], may be cited as the 'District of Columbia Securities Act'."

§ 2–2402. Fraud.

It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly—

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they are made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(Aug. 30, 1964, 78 Stat. 623, Pub. L. 88–503, § 3.)

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides: "(a) Sections 3, 13b, 13d, 16, and 25 [Sections 2–2402, 2–2412(b), 2–2412(d), 2–2415, and 2–2418], together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

§ 2–2403. License requirement.

(a) It shall be unlawful for any person to transact business in the District as a broker-dealer or agent unless he is effectively licensed under this Chapter.

(b) It shall be unlawful for any broker-dealer or issuer to employ an agent unless the agent is effectively licensed under this Chapter. The license of an agent shall not be effective during any period when he is not associated with a particular broker-dealer or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Commission.

(c) Every license and renewal license shall expire one year from its effective date, but in any case in which timely and sufficient application for a renewal license has been made in accordance with section 2–2404(a) no license shall expire until final action of the Commission upon such pending application. The Commission may by rule or order fix a schedule for the first renewal of licenses so that subsequent renewals may be staggered over the one-year period. For this purpose the Commission shall reduce the license fee proportionately for any initial license which may expire before one year from its effective date. (Aug. 30, 1964, 78 Stat. 623, Pub. L. 88–503, § 4.)

EFFECTIVE DATE

See note to section 2–2401.

§ 2–2404. License procedure.

(a) A broker-dealer or agent may obtain an initial license by filing with the Commission an application executed by all partners, directors, and officers of the applicant personally engaged in the securities business in the District, together with a consent to service of process pursuant to section 2–2414(f). The application for each broker-dealer applicant shall contain the following information, and for each

partner, officer, or director, each person occupying a similar status or performing similar functions and each person directly or indirectly controlling such broker-dealer the information prescribed in subdivisions (3), (4), (5) and (7); and the application for each agent shall contain the information specified in subdivisions (3), (4), (5) and (7):

(1) the applicant's form and place of organization;

(2) the applicant's proposed method of doing business;

(3) the qualifications and business history of the applicant;

(4) each injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) each disciplinary action by a securities exchange or securities association within the ten years preceding the date of application;

(6) the applicant's financial condition and history; and

(7) such other matters as the Commission may by rule prescribe as being necessary or appropriate in the public interest or for the protection of investors.

The Commission may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in the District. If no denial order is in effect and no proceeding is pending under section 10, a license shall become effective at noon of the thirtieth day after any application is filed. The Commission may by rule or order specify an earlier effective date, and it may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. A license of a broker-dealer shall be deemed to constitute a license of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(b) An applicant for an initial or renewal license shall pay a filing fee. The filing fee for an initial or a renewal license shall, except for agents, be fixed by the Commission but shall not exceed $125 for a broker-dealer, plus an amount not exceeding $12.50 for each partner, officer, and director, and each person occupying a similar status or performing similar functions, who transacts business in the District. The filing fee for an initial license for an agent shall be $12.50. The filing fee for each renewal license for an agent shall be $5.

(c) A licensed broker-dealer may file an application for a license of a successor, whether or not the successor is then in existence, for the unexpired portion of the period during which the license of such broker-dealer is effective. There shall be no filing fee.

(d) Each broker-dealer licensed in the District shall have and maintain a minimum net capital of $25,000, except that the Commission may, by rule, fix a minimum net capital in lesser amounts, but in no case less than $5,000 net capital, for a broker-dealer with a limited license which authorizes such broker-dealer to engage only in transactions in securities registered under the Investment Company Act of 1940. The Commission may by rule prescribe a ratio between net capital and aggregate indebtedness.

(e) The Commission may by rule require a licensed broker-dealer or the agent of an issuer to post a surety bond issued by a corporate surety company licensed to do business in the District of Columbia in such amounts up to $25,000 and on such conditions as the Commission may determine to be necessary or appropriate in the public interest or for the protection of investors, the surety bond of a licensed broker-dealer to cover such broker-dealer and all licensed agents thereof in the District of Columbia. Every bond shall provide for suit thereon by any person who may have a cause of action arising under section 2–2413, and, if the Commission by rule or order requires, by any person who may have a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which such liability is based.

(f) The license of a broker-dealer or agent may be renewed by filing with the Commission prior to the expiration thereof an application containing such information as the Commission may require to indicate any material change in the information contained in the original application or any renewal thereof, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within one year prior to the date of such application for renewal. (Aug. 30, 1964, 78 Stat. 625, Pub. L. 88–503, § 5).

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2405. Unlawful representation concerning licensing.

(a) Neither the fact that an application for a license has been filed nor the fact that a person is effectively licensed shall constitute a finding by the Commission that any document filed under this chapter, or that any statement made therein, is true, complete, and not misleading. Neither any such fact nor the fact that an exemption is available for any person, security or transaction shall mean that the Commission has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It shall be unlawful for any broker-dealer or agent to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a). (Aug. 30, 1964, 78 Stat. 625, Pub. L. 88–503, § 6.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2406. Records and reports.

(a) Every licensed broker-dealer and agent shall make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as

the Commission by rule shall prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) All the records and reports referred to in subsection (a) shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by the Commission, within or without the District, as the Commission may deem necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Commission, insofar as it may deem it practicable in administering this subsection, may cooperate with the securities administrator of any State, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. (Aug. 30, 1964, 78 Stat. 625 Pub. L. 88–503, § 7.)

EFFECTIVE DATE

See note to section 2–2402.

REFERENCE IN TEXT

The Securities Exchange Act of 1934 is set out in title 15, chapter 2B, United State Code.

§ 2–2407. Filing of sales and advertising literature.

The Commission may by order require any specific broker-dealer or agent to file with the Commission any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, except sales and advertising literature describing an exempt security as defined in section 2–2401(e) or used in an exempt transaction as defined in section 2–2401(f). (Aug. 30, 1964, 78 Stat. 625, Pub. L. 88–503, § 8.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2408. Misleading filings.

It shall be unlawful for any person to make or cause to be made, in any document filed with the Commission or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading in any material respect. (Aug. 30, 1964, 78 Stat. 626, Pub. L. 88–503, § 9.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2409. Denial, revocation, suspension, cancellation, and withdrawal of license.

(a) The Commission may by order deny, suspend, or revoke any license if it finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer—

(1) has filed an application for a license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of this chapter or any rule or order under this chapter, or has violated or failed to comply with the minimum capital requirement of section 2–2404(d) or any ratio rule prescribed thereunder;

(3) has been convicted, within the past ten years, of any misdemeanor involving a fiduciary relationship or a security or any aspect of the securities business, or of any felony, or has been acquitted of any such offense within the same period solely on the ground that he was insane at the time of its commission;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the Commission denying, suspending, or revoking a license as a broker-dealer or agent;

(6) is the subject of an order entered within the past five years by the securities administrator of any State or by the Securities and Exchange Commission denying or revoking a license or registration as a broker-dealer or agent, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association, or is the subject of a United States Post Office fraud order; but (i) the Commission may not institute a revocation or suspension proceeding under clause (6) more than two years from the date of the order or action relied on, and (ii) it may not enter an order under clause (6) on the basis of an order under a State act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices in the securities business or while acting in any fiduciary capacity;

(8) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Commission may not enter an order against a broker-dealer under this clause without a finding of insolvency as to the broker-dealer; or

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

The Commission may by order deny, suspend, or revoke any license if it finds that the order is in the public interest and that the applicant or licensee—

(10) has failed reasonably to supervise his agents if he is a broker-dealer; or

(11) has failed to pay the proper filing fee; but the Commission may enter only a denial order under this clause, and it shall vacate any such order when the deficiency has been corrected.

The Commission may not institute a suspension or revocation proceeding solely on the basis of a fact or transaction known to it when the license became effective unless the proceeding is instituted within the next thirty days.

(b) The following provisions shall govern the application of subsection (a)(9):

(1) The Commission may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The Commission may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge or both.

(3) The Commission shall consider that an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer.

(4) The Commission shall by rule provide for an examination, which may be written or oral or both, to be taken by any class of, or all, applicants.

(c) The Commission may by order summarily postpone issuance of a license or suspend an effective license pending determination of any proceeding under this section. Upon the entry of the order, the Commission shall promptly notify the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Commission, the order will remain in effect until it is modified or vacated by the Commission. If hearing is requested or ordered, the Commission, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Commission finds that any licensee or applicant for a license is no longer in existence, or has ceased to do business as a broker-dealer or agent, or has been adjudicated to be of unsound mind or is subject to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Commission may by order cancel the license or application.

(e) Withdrawal of a license of a broker-dealer or agent shall become effective thirty days after receipt of an application to withdraw or within such shorter period of time as the Commission may determine, unless a revocation or suspension proceeding is pending when the applicaiton is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the Commission shall by order determine. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commission may nevertheless institute a revocation or suspension proceeding under subsection (a)(2) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or licensee (as well as the employer or prospective employer if the applicant or licensee is an agent), (2) opportunity for hearing, and (3) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record. (Aug. 30, 1964, 78 Stat. 626, Pub. L. 88-503, § 10.)

EFFECTIVE DATE

See note to section 2-2402.

§ 2-2410. Investigations and subpenas.

(a) The Commission in its discretion (1) may make such public or private investigations within or without the District as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the Commission may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this chapter or any rule or order hereunder, except that no public statement, notice, or release concerning any investigation, proceeding, or order under this chapter which is not a finding of a hearing examiner or of a Commissioner or a final determination of the Commission shall allege a violation of this chapter or a ground for denial, suspension, or revocation of a license, unless such statement, notice, or release specifies that such allegations are unproved until final determination, and that the purpose of the investigation or proceeding is to determine whether the allegations are true.

(b) For the purpose of any investigation or proceeding under this chapter, the Commission may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, agreements, or other documents or records which it deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpena issued to any person, the United States District Court for the District of Columbia, upon application by the Commission with the approval of the United States Attorney for the District of Columbia, may issue an order compelling such person to appear before the Commission, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) No person shall be excused from attending and testifying or from producing any document or record before the Commission, or the officer designated by it, in obedience to a court order pursuant to subsection (c), on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is by such order compelled, after claiming his privilege against self-incrimination, to testify

or produce evidence (documentary or otherwise), except that the individual testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) Any person compelled to appear in person before the Commission or a representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. (Aug. 30, 1964, 78 Stat. 628, Pub. L. 88-503, § 11.)

EFFECTIVE DATE

See note to section 2-2402.

§ 2-2411. Injunctions.

Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, it may in its discretion bring an action in the United States District Court for the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the Commission to post a bond. (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88-503, § 12.)

§ 2-2412. Criminal penalties.

(a) Any person who shall willfully violate any provision of this chapter except sections 2-2402 and 2-2408, or who shall willfully violate section 2-2408 knowing the representation to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) Any person who shall willfully violate section 2-2402 shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both.

(c) Any person who shall willfully violate any rule or order under this chapter shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(d) No person shall be prosecuted, tried, or punished for any offense under this chapter or any rule or order hereunder unless the indictment is returned or the information is filed within five years next after such offense shall have been committed.

(e) Nothing in this chapter shall be construed to limit the power of the United States or of the District of Columbia to punish any person for any conduct which constitutes an offense under any other Act of Congress applicable in the District, or under any municipal ordinance or regulation of the District, or at common law. (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88-503, § 13.)

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides: "(a) Sections 3, 13b, 13d, 16, and 25 [Sections 2-2402, 2-2412(b), 2-2412(d), 2-2415, and 2-2418], together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

§ 2-2413. Civil liabilities.

(a) Any person who—

(1) offers or sells a security in violation of section 2-2403(a) or 2-2405(b); or

(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable to the person purchasing such security from him, and the purchaser may bring a civil action to recover the consideration paid for the security with interest thereon and with costs and reasonable attorney fees less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. For this purpose damages shall be the amount that would be recoverable upon a tender, less the market value of the security when the buyer disposed of it and interest from the date of disposition.

(b) Any person who directly or indirectly controls a seller liable under subsection (a), any partner, officer, or director of such a seller and any person occupying a similar status or performing similar functions, any employee of such a seller who materially aids in the sale, and any broker-dealer or agent who materially aids in the sale shall also be liable jointly and severally with and to the same extent as the seller, unless the nonseller who shall be so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Any liability or cause of action under this section shall survive the death of any person who, if living, would have such a liability or cause of action.

(e) No person may bring an action under this section after two years from the contract of sale. No person may bring an action under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid for the security together with interest at 6 per centum per annum from the date of payment, less the amount of any income received on the security, and if he failed to accept that offer within thirty days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or of any rule or order here-

under, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit upon the contract.

(g) Any condition, stipulation, or provision binding any person who acquires any security to waive compliance with any provision of this chapter or with any rule or order under this chapter shall be void.

(h) The rights and remedies provided by this chapter shall be in addition to any other rights or remedies that may exist at law or in equity, but this chapter shall not create any cause of action not specified in this or section 2-2404(e). (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88-503, § 14.)

EFFECTIVE DATE

See note to section 2-2402.

§ 2-2414. Scope of chapter and service of process.

(a) Sections 2-2402, 2-2403(a), 2-2405, and 2-2413 shall apply to persons who sell or offer to sell when (1) an offer to sell is made in the District, or (2) an offer to buy is made and accepted in the District.

(b) Sections 2-2404, 2-2403(a), and 2-2405 shall apply to persons who buy or offer to buy when (1) an offer to buy is made in the District, or (2) an offer to sell is made and accepted in the District.

(c) For the purpose of this section, an offer to sell or to buy is made in the District whether or not either party is then present in the District, when the offer (1) originates from the District or (2) is directed by the offeror to the District and received at the place to which it is directed (or at any post office in the District in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in the District when acceptance (1) is communicated to the offeror in the District and (2) has not previously been communicated to the offeror, orally or in writing, outside the District. Acceptance is communicated to the offeror in the District, whether or not either party is then present in the District, when the offeree directs it to the offeror in the District reasonably believing the offeror to be in the District and it is received at the place to which it is directed (or to any post office in the District in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in the District by anything appearing in (1) any bona fide newspaper or other publication of general, regular, and paid circulation, circulated by or on behalf of the publisher in the District which is not published in the District, or which is published in the District but has had more than two-thirds of its circulation outside the District during the past twelve months, or (2) any radio or television program received in the District which originates outside of the District.

(f) Any applicant for a license under this chapter shall file with the Commission, in such form as it by rule may prescribe, an irrevocable consent appointing each member of the Commission or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which shall arise under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who shall have filed such a consent in connection with one application or offering need not file another. Service may be made by leaving a copy of the process in the office of the Commission, but it shall not be effective unless (1) the plaintiff forthwith shall sent notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the Commission, and (2) the plaintiff's affidavit of compliance with this subsection shall be filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

(g) When any person, including any nonresident of the District, shall engage in conduct prohibited or made actionable by this chapter or any rule or order under this chapter and he shall not have filed a consent to service of process under subsection (f) and personal jurisdiction over him cannot otherwise be obtained in the District, that conduct shall be considered equivalent to his appointment of each member of the Commission, or his successor in office, to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which shall arise from that conduct and which shall be brought under this chapter or any rule or order under this chapter, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Commission, but it shall not be effective unless (1) the plaintiff forthwith shall send notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or shall take other steps reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection shall be filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

(h) For the purposes of subsections (f) and (g) of this section, the term "plaintiff" includes the Commission in any suit, action or proceeding initiated by it.

(i) After service of process under this section, the court, or the Commission in a proceeding before it, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend. (Aug. 30, 1964, 78 Stat. 630, Pub. L. 88-503, § 15.)

EFFECTIVE DATE

See note to section 2-2402.

§ 2-2415. Administration of chapter.

(a) This chapter shall be administered by the Public Service Commission of the District of Columbia. The Commission is hereby authorized to establish such offices and with such names or titles, and to appoint and employ such officers and employees and prescribe their duties, as may be necessary to carry out the provisions of this chapter, and such positions shall be subject to the Classification Act of 1949.

(b) All collections, including fees, received pursuant to this Act shall be deposited in the Treasury

of the United States in a trust fund from which may be paid, in the same manner as provided by law for other expenditures of the District, the expenses, as authorized by the Commission, of hearings held pursuant to this chapter, including stenographic and reporting services (by contract or otherwise) and rental or purchase of equipment. Whenever the amount of such trust fund exceeds $5,000, the excess shall be transferred to the funds deposited in the Treasury to the credit of the District of Columbia.

(c) Appropriations to carry out the purposes of this chapter are hereby authorized.

(d) A majority of the members of the Commission shall constitute a quorum to do business, and any vacancy shall not impair the power of the remaining members to exercise all the powers of the Commission. In the case of any application, investigation, inquiry, hearing, or proceeding under this chapter, the Commission may designate one of its members or a hearing examiner to examine documents, hear testimony, and submit to the Commission the record of testimony and such documents with his proposed findings and conclusions of fact and law.

(e) The Commission is hereby authorized to make, amend, and rescind such rules, orders, and forms as may be necessary to carry out the provisions of this chapter, including, but not limited to, rules, orders, and forms governing applications and amendments thereto, investigations, inquiries, hearings, and proceedings, and including by rule definitions of any items, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purposes of rules and forms, the Commission may classify persons and matters within its jurisdiction and may prescribe different requirements for different classes.

(f) No rule, form, or order may be made, amended, or rescinded, unless the Commission finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the Commission may cooperate with the securities administrator of any State and the Securities and Exchange Commission with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of license applications, records, and reports, and other documents wherever practicable.

(g) The Commission may by rule or order prescribe (1) the form and content of statements, records, reports, and other documents required under this chapter or rules or orders thereunder, (2) the circumstances under which such statements, records, reports or other documents shall be filed with the Commission, and (3) whether any required statements, records, reports, or other documents shall be certified by independent or certified public accountants.

(h) All rules and forms of the Commission made under this chapter shall be published.

(i) No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the Commission, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(j) A document shall be deemed to be filed or submitted to the Commission when it is received by it during regular business hours.

(k) The Commission shall keep a register of all license applications which are or have ever been effective under this chapter, and all denial, suspension, postponement, or revocation orders entered under this chapter. Such register shall be open for public inspection during regular business hours.

(l) License applications and materials submitted therewith or in connection therewith may be made available to the public under such rules as the Commission may prescribe. Such rules may include, but shall not be limited to, rules prescribing reasonable fees for furnishing photostatic or other copies upon request. The Commission may certify under seal such copy or copies of any document available to the public or any entry in the register, and any copy so certified shall be admitted as evidence with the same effect as the exemplifications of record referred to in section 14–501 of the District of Columbia Code.

(m) The Commission may refer evidence concerning violations of this chapter or of any rule or order under this chapter to the United States Attorney for the District of Columbia who may, with or without such reference, institute criminal proceedings under this chapter. The Commission shall comply with any request of the Attorney General of the United States, the Postmaster General of the United States, the Securities and Exchange Commission, or the United States Attorney for the District of Columbia for any information or evidence coming to it in the administration of the chapter. The Commission in its discretion may refer any information or evidence coming to it in the administration of this chapter to any department or agency of the United States, to the securities administrator of any State, or to any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(n) Any hearing held by the Commission pursuant to this chapter shall be public unless the Commission in its discretion and with the consent of all the parties to such hearing order that the hearing be conducted privately. (Aug. 30, 1964, 78 Stat. 632, Pub. L. 88–503, § 16.)

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides: "(a) Sections 3, 13b, 13d, 16, and 25 [Sections 2–2402, 2–2412(b), 2–2412 (d), 2–2415, and 2–2418], together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

REFERENCES IN TEXT

The Classification Act of 1949 is the act set out in title 5, chapter 21, of the U.S. Code.

The Securities Exchange Act of 1934 is set out in title 15, chapter 2B, U.S. Code.

§ 2–2416. Advisory committee.

The President of the Board of Commissioners of the District of Columbia shall appoint a District of Columbia Securities Advisory Committee which shall consist of six members, who shall be residents of the District of Columbia or the State of Maryland or the State of Virginia, at least two of whom shall be actively engaged in the securities business and at least two of whom shall be members of the bar of the District of Columbia. In no case shall more than three members of the Advisory Committee be members of the same political party. The members shall be selected on the basis of their experience and qualifications to advise the Public Service Commission on all phases of the securities business. The members shall be appointed for staggered terms of three years each, with two members appointed each year, to serve without compensation and eligible for reappointment for additional terms, provided that not more than two of the terms are in succession. The duration of the terms of the first members appointed hereunder shall be designated by the President of the Board of Commissioners at the time of their appointment. The members of the Advisory Committee shall select their own chairman. Meetings of the Advisory Committee shall be held when called by the Chairman of the Public Service Commission and may be attended by members of the said Commission. The Advisory Committee shall give the Public Service Commission the benefit of its advice on any and all matters pertaining to the administration of this chapter, particularly the adoption, amendment or repeal of rules, regulations, and forms provided for herein. (Aug. 30, 1964, 78 Stat. 633, Pub. L. 88–503, § 18.)

Effective Date

See note to section 2–2402.

§ 2–2417. Severability.

If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable. (Aug. 30, 1964, 78 Stat. 633, Pub. L. 88–503, § 19.)

Effective Date

See note to section 2–2402.

§ 2–2418. Change of name of Public Utilities Commission.

The Public Utilities Commission of the District of Columbia established by section 43–201 hereafter shall be known as the "Public Service Commission of the District of Columbia". Wherever reference is made to the Public Utilities Commission of the District of Columbia in any Act of Congress, or in any compact authorized by an Act of Congress, or in any regulation or order, such reference shall be held to be a reference to the Public Service Commission of the District of Columbia. (Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

Effective Date

Section 20 of act Aug. 30, 1964, provides as follows: "(a) Sections 2–2402, 2–2412(b), 2–2412(d), 2–2415, and 2–2418, together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

TITLE 3.—BOARD OF PUBLIC WELFARE

Chap. Sec.
2. Public Assistance 3–201

Chapter 2.—PUBLIC ASSISTANCE

Sec.
3–201. Definitions.
3–202. Categories and administration of public assistance.
3–203. Eligibility for public assistance.
3–204. Amount of public assistance.
3–205. Application for public assistance.
3–206. Investigation of applicant.
3–207. Award and payment of public assistance.
3–208. Recipient incapacitated.
3–209. Emergency public assistance.
3–210. Redetermination of grants.
3–211. Records.
3–212. Penalties.
3–213. Funeral expenses.
3–214. Hearings.
3–215. Public assistance not assignable.
3–216. Fraud in obtaining public assistance—Repayment.
3–217. Property—District's claim against estate of recipient.
3–218. Responsible relatives.
3–219. Payment of expenses.
3–220. Delegation of authority.
3–221. Voluntary services.
3–222. Appropriations.
3–223. Validity.

§ 3–201. Definitions.

As used in this chapter, the word "District" means the District of Columbia; the word "Commissioners" means the Commissioners of the District of Columbia or the agents, agencies, officers, and employees designated by them to perform any function vested in them by this chapter; the term "public assistance" means payment in or by money, medical care, remedial care, goods or services to, or for the benefit of, needy persons; the word "recipient" means a person to whom or on whose behalf public assistance is granted and the word "State" includes Puerto Rico, Guam, and the Virgin Islands. (Oct. 15, 1962, 76 Stat. 914, Pub. L. 87–807, § 2.)

EFFECTIVE DATE

Section 27 of act Oct. 15, 1962, provides as follows: "Except as otherwise provided [see § 3–204] in this Act, [this chapter] the provisions of this Act [this chapter] shall take effect on the first day of the second month following the date of enactment."

REPEAL

Section 24 of act Oct. 15, 1962, repealed chapters 1 and 2 of Title 46, and chapter 7A of Title 32.

EFFECT ON REORGANIZATION PLAN NO. 5

Act Oct. 15, 1962, provides as follows: "This Act [this chapter] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act [this chapter] in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with such plan."

POPULAR NAME

Section 1 of act Oct. 15, 1962, provided: "That this Act [this chapter] may be cited as the 'District of Columbia Assistance Act of 1962'."

§ 3–202. Categories and administrations of public assistance.

(a) The following categories of public assistance are hereby established:

(1) Old Age Assistance;

(2) Aid to the Blind;

(3) Aid to the Disabled;

(4) Aid to Dependent Children;

(5) General Public Assistance.

(b) This chapter shall be administered by the Commissioners who shall—

(1) provide for maximum cooperation with other agencies rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self-support or self-care;

(2) establish and enforce such rules and regulations as may be necessary or desirable to carry out the provisions of this chapter;

(3) cooperate in all necessary respects with agencies of the United States Government in the administration of this chapter, and accept any funds, goods, or services payable to the District for public assistance and for administering public assistance;

(4) enter into reciprocal agreements with any State relative to the provision of public assistance to residents and nonresidents.

(Oct. 15, 1962, 76 Stat. 914, Pub. L. 87–807, § 3.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–203. Eligibility for public assistance.

Public assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance; or (b) who was born within one year immediately preceding the application for such aid, if the parent or other relative with whom the child is living has resided in the District for one year immediately preceding the birth; or (c) is otherwise within one of the categories of public assistance established by this chapter: *Provided,* That no persons shall be eligible for old-age assistance established by category number 1, subsection (a) of section 3–202 of this chapter, unless he has resided in the District for five years or more within the nine years immediately preceding application for such assistance,

and who has resided continuously therein for one year immediately preceding the said application. (Oct. 15, 1962, 76 Stat. 914, Pub. L. 87–807, § 4.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–204. Amount of public assistance.

(a) The amount of public assistance which any person shall receive shall be determined in accordance with regulations approved by the Commissioners.

(b) Such amount as referred to in subsection (a) of this section shall not be less than the full amount determined as necessary on the basis of the minimum needs of such person as established in accordance with such regulations.

(c) The provisions of subsection (b) of this section shall become effective upon enactment. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 5.)

EFFECTIVE DATE

Subsection (b) of this section became effective on Oct. 15, 1962. For effective date of the remainder of chapter see note to section 3–201.

§ 3–205. Application for public assistance.

Application for public assistance shall be accepted from, or on behalf of, any person who believes himself eligible for public assistance. Such application shall be made in the manner and form prescribed by the Commissioners, and shall contain such information as the Commissioners shall require. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 6.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–206. Investigation of applicant.

Whenever the Commissioners shall receive an application for public assistance, they shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as they may require. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 7.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–207. Award and payment of public assistance.

(a) Upon completion of the investigation, the Commissioners shall determine whether the applicant is eligible for public assistance, the type and amount of public assistance for which he is eligible, and the date from which such public assistance shall begin, and shall furnish public assistance with reasonable promptness to all eligible persons: *Provided,* That such date shall not be prior to the first day of the calendar month in which such determination is made, except that as a result of reconsideration or review of a case, and in order to correct previous erroneous administrative action such as undue delay or improper denial of assistance, an initial payment of public assistance may be made for a period beginning prior to the first day of the calendar month in which the eligibility determination is made.

(b) Money payments of public assistance shall be made by check, except that in emergency cases under section 3–203, money payments of public assistance may be made in cash, and to accomplish such purpose the Commissioners are authorized to make necessary provisions for advancing from time to time to one or more officers or employees of the District such sum or sums as the Commissioners may determine: *Provided,* That no such advance shall be made to any such officer or employee who has not been previously bonded in such amount and form as the Commissioners shall determine. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 8.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–208. Recipient incapacitated.

Whenever a recipient has been found by the Commissioners to be incapable of taking care of himself, his property, or his money, and a person has been judicially appointed as legal representative, or a responsible person has been appointed by the Commissioners, on behalf of such incapacitated individual for the purpose of receiving and managing such individual's public assistance payments (whether or not he is such individual's legal representative for other purposes), public assistance payments may be made on behalf of such individual to such judicially appointed legal representative, or to such responsible person appointed by the Commissioners. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 9.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–209. Emergency public assistance.

The Commissioners may grant emergency public assistance pending completion of investigation when eligibility has been established pursuant to section 3–203: *Provided,* That such emergency assistance shall not be granted in any case for a period exceeding thirty days. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 10.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–210. Redetermination of grants.

All public assistance grants made under this chapter shall be reconsidered by the Commissioners as frequently as they may deem necessary, but in every case the Commissioners shall make such reconsiderations at least once in each year. After such further investigation as the Commissioners may deem necessary, the amount of public assistance may be changed, or may be entirely withdrawn, if the Commissioners find that any such grant has been made erroneously, or if they find that the recipient's circumstances have altered sufficiently to warrant such action. If at any time during the continuance of public assistance the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, or if other changes should occur in the circumstances previously reported by him which would alter either his need or his eligibility, it shall be his duty to notify the Commissioners of such fact immediately on the receipt or possession of such additional income or resources, or on the change of circumstances. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 11.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–211. Records.

(a) The Commissioners are directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Commissioners relating to public assistance. Except as herein otherwise provided, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for, or recipients of, public assistance to purposes directly connected with the administration of public assistance. The Commissioners are authorized in their discretion to include in such regulations provision for the public to have access to the records of disbursement or payment of public assistance made after the effective date of this chapter.

(b) No person who obtains information by virtue of any regulation made pursuant to subsection (a) of this section shall use such information for commercial or political purposes.

(c) This section and section 3–212 shall be construed as State legislation conforming to the requirements of section 618 of the Revenue Act of 1951 (Public Law 183, Eighty-second Congress). (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 12.)

Reference in Text

Section 618 of the Revenue Act of 1951 referred to in text is set out as a note to section 302 of Title 42, U.S. Code.

Effective Date

See note to sections 3–201 and 3–204.

§ 3–212. Penalties.

Any person violating subsection (b) of section 3–211 shall be punished by a fine of not more than $500, or by imprisonment of not more than ninety days, or by both such fine and imprisonment. Prosecutions for such violations and for violations of section 3–216(a) shall be brought to the municipal court for the District of Columbia by the Corporation Counsel or any of his assistants. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 13.)

Change of Name

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

Effective Date

See note to sections 3–201 and 3–204.

§ 3–213. Funeral expenses.

On the death of a recipient, reasonable funeral expenses may be paid, subject to rules and regulations approved by the Commissioners. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 14.)

§ 3–214. Hearings.

An applicant for, or recipient of, public assistance aggrieved by the action or inaction of the Commissioners shall be entitled to a hearing. Each applicant or recipient shall be notified of his rights to a hearing. Upon request for such hearing, reasonable notice of the time and place thereof shall be given to such applicant or recipient. Such hearing shall be conducted in accordance with rules and regulations prescribed by the Commissioners. The findings of the Commissioners on any appeal shall be final. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 15.)

Effective Date

See note to sections 3–201 and 3–204.

§ 3–215. Public assistance not assignable.

Public assistance awarded under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable to any recipient under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 16.)

Effective Date

See note to sections 3–201 and 3–204.

§ 3–216. Fraud in obtaining public assistance—Repayment.

(a) Any person who by means of false statement, failure to disclose information, or impersonation, or by other fraudulent device obtains or attempts to obtain or any person who knowingly aids or abets such person in the obtaining or attempting to obtain, (1) any grant or payment of public assistance to which he is not entitled; (2) a larger amount of public assistance than that to which he is entitled; or (3) payment of any forfeited grant of public assistance; or any person who with intent to defraud the District aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance, shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than $500, or imprisoned not to exceed one year, or both.

(b) Any person who obtains any payment of public assistance to which he is not entitled, or in excess of that to which he is entitled shall be liable to repay such sum, or if continued on assistance, shall have future grants proportionately reduced until the excess amount received has been repaid. In any case in which, under this section, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the District. Any repayment required by this subsection may, in the discretion of the Commissioners, be waived in whole or in part, upon a finding by the Commissioners that such repayment would deprive such person, his spouse, parent, or child of shelter or subsistence needed to enable such person, spouse, parent, or child to maintain a minimum standard of health and well-being. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 17.)

Effective Date

See note to sections 3–201 and 3–204.

§ 3–217. Property—District's claim against estate of recipient.

(a) At the death of any person who has received public assistance in the form of old-age assistance, or aid to the disabled pursuant to the provisions of this chapter, or of any Act repealed by this chapter, the District shall have a preferred claim for the amount of any such public assistance against the estate of the deceased recipient. Notwithstanding the provisions of any other law, no statute of limitations shall be deemed applicable as a defense to

any claim of the District made pursuant to this section. The Commissioners are authorized to waive any such claim when in their judgment they deem it appropriate to do so.

(b) In addition to the remedy provided by subsection (a) of this section, or by any other provision of law, the Commissioners may file a notice in the office of the Recorder of Deeds in any case where public assistance in the form of old-age assistance or aid to the disabled is granted to any person under this chapter, and such notice shall constitute and have the effect of a lien in favor of the District against the real and personal property of such person for the amount of such public assistance which theretofore has been granted or which may thereafter be granted to, or on behalf of, such persons. Any such lien may be enforced by a proceeding filed in the United States District Court for the District of Columbia. The Commissioners shall file in the office of the Recorder of Deeds a release of any such real and personal property from the effect of such lien whenever there has been repaid to the District the amount of the public assistance theretofore granted to, or on behalf of, such person. The Commissioners are also authorized to release any such lien when in their judgment they deem it appropriate to do so. Such notices and releases may be filed without payment of fees.

(c) If the District collects from any recipient of public assistance in the form of old-age assistance or aid to the disabled or from his estate, or otherwise, any amount with respect to public assistance furnished him under this chapter, or under any Act repealed by this chapter the pro rata share to which the United States is equitably entitled shall be paid to the United States in accordance with the provisions of the Social Security Act, as amended (42 U.S.C. 303, 603, 1203, 1353). The pro rata share due the District shall be deposited as miscellaneous receipts to the credit of the District. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87–807, § 18.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–218. Responsible relatives.

(a) The husband, wife, father, mother, or adult child of a recipient of public assistance, or of a person in need thereof, shall, according to his ability to pay, be responsible for the support of such person. Any such recipient of public assistance or person in need thereof or the Commissioners may bring an action to require such husband, wife, father, mother, or adult child to provide such support and the court shall have the power to make orders requiring such husband, wife, father, mother, or adult child to pay to such recipient of public assistance or to such person in need thereof such sum or sums of money in such installments as the court in its discretion may direct and such orders may be enforced in the same manner as orders for alimony.

(b) The Commissioners shall be empowered on behalf of the District to sue such husband, wife, father, mother, or adult child for the amount of public assistance granted under this chapter or under any Act repealed by this chapter to such recipient or for so much thereof as such husband, wife, father, mother, or adult child is reasonably able to pay.

(c) All suits, actions, and court proceedings under this section shall be brought in the domestic relations branch of the municipal court for the District of Columbia. To the extent applicable, the provisions of sections 11–758 to 11–770 shall be followed in suits, actions, and proceedings brought pursuant to this section. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87–807, § 19.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

CHANGE OF NAME

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions".

§ 3–219. Payment of expenses.

All necessary expenses incurred by the District in carrying out the provisions of this chapter shall be disbursed in the same manner as other expenses of the District are disbursed. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 20.)

§ 3–220. Delegation of authority.

The Commissioners are authorized to make provisions for delegation and subdelegation of any function vested in them by this chapter to any agency, officer, or employee of the District. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 21.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–221. Voluntary services.

The Commissioners are authorized to accept voluntary services in administering the provisions of this chapter. Such voluntary services shall not create any obligation against the District. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 22.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–222. Appropriations.

(a) The Commissioners shall include in their annual estimates of appropriations such sums as may be needed to carry out the provisions of this chapter.

(b) Unobligated balances of appropriations for the Department of Public Welfare are hereby made available for the purposes of this chapter. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 23.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–223. Validity.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (Oct. 15, 1962, 76 Stat. 920, Pub. L. 87–807, § 26.)

TITLE 4.—POLICE AND FIRE DEPARTMENTS

Chapter 1.—METROPOLITAN POLICE

Sec.
4–156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.
4–159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.
4–160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.
4–160a. Liability of district government, its officers or employees for damages to property—Net proceeds of judgment in favor of government against warehouseman and garagekeeper for damage to property to be paid to owner—"Gross negligence" defined.

§ 4–106. Classification of officers and privates of police department—Duties of each.

* * * The Metropolitan Police force shall consist of not less than three thousand officers and members, in addition to the persons appointed as surgeons for the Metropolitan Police force, appointed as police matrons, or appointed as special privates pursuant to section 4–133, and in addition to any retired officer or member of the Metropolitan Police force called back into service pursuant to section 4–514. (May 9, 1956, 70 Stat. 148, ch. 243, § 1; June 27, 1961, 75 Stat. 121, Pub. L. 87–60, § 1.)

REFERENCES IN TEXT

Section 4–514 now covered by section 4–528. See note to section in main volume.

AMENDMENT

1961—Act June 27, 1961, Pub. L. 87–60, struck out the words "two thousand five hundred officers and members" in the last sentence and inserted in lieu thereof the words "three thousand officers and members".

§ 4–124. Police surgeons—Qualifications—Duties.

Police surgeons shall have actually and bona fide resided in the District of Columbia for at least two years next preceding the date of their appointment and shall be duly qualified according to law for the practice of medicine and surgery in said District and shall have actively been engaged in the practice of their profession for a period of at least three years next preceding the date of their appointment. Such police surgeons shall be subject to such laws, rules, and regulations as the Commissioners of the District of Columbia may from time to time make, alter, or amend. Such police surgeons shall attend, without charge, all members of said police force and of the fire department of said District for any injury received or disease contracted (whether or not received or contracted in the performance of duty), examine applicants for appointment and retirement in and to said police force and said fire department, and attend such dependent sick and injured, and examine and attend such insane or alleged insane persons as may be taken in charge by said police, and shall perform such other duties as the said commissioners may direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056, par. 7; Sept. 27, 1962, 76 Stat. 635, Pub. L. 87–708, § 1.)

AMENDMENTS

1962—Act of Sept. 27, 1962, amended the third sentence of this section by adding after the words "fire department of said District" the clause, "for any injury received or disease contracted (whether or not received or contracted in the performance of duty)".

§ 4–132a. Residence requirements of members of Police Force and Fire Department.

* * * * *

(b) For the purposes of sections 4–132a and 4–409a, the Commissioners of the District of Columbia are hereby authorized, in their discretion, to prescribe the area constituting the "Washington, District of Columbia, metropolitan district" so as to include the District of Columbia and the territory within any radius which is greater than twelve miles but not more than twenty-five miles from the United States Capitol Building. (July 25, 1956, 70 Stat. 646, ch. 726, § 1; Aug. 30, 1964, 78 Stat. 698, Pub. L. 88–517, § 1.)

AMENDMENT

1964—Section 1 of act Aug. 30, 1934, amended section by striking "twenty" and inserting in lieu "twenty-five".

§ 4–140. Arrests without warrant.

NOTES TO DECISIONS

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3. Arrest without warrant

Where police officers were in a position to see a crime committed in their presence, and saw narcotics paraphernalia in room and defendant in act of injecting himself, officers were under duty to arrest offender immediately without a warrant. *P. C. Reid* v. *United States* (D.C. App. 1964, 201A. 2d 867).

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

4.50. Confession

Statements which police elicited from defendant on day of his arrest, after victim had positively identified defendant to satisfaction of arresting officer about 30 minutes after arrest and before defendant was taken before committing magistrate were inadmissible. *C. L. Ricks* v. *United States* (1964, 334 F. 2d 964, — U.S. App. D.C. —).

6. Evidence

Admission of unsolved housebreakings and larcenies made a number of hours after defendant had been arrested at 12:25 a.m. upon probable cause for attempted

housebreaking was inadmissible against defendant who was not presented before a commissioner until some time after 10 a.m. *Coleman* v. *United States* (1963, 317 F. 2d 891, 115 U.S. App. D.C. 191).

§ 4–156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.

* * * * *

(e) Whenever the owner of property in the custody of the property clerk has been notified by the property clerk, by registered or certified mail, to take possession of such property within thirty days after the date of mailing of such notification, and such owner fails so to do within such period, such property shall be thereafter treated as other unclaimed, abandoned, or lost property and shall be disposed of as provided in section 4–160: *Provided,* That if, in the opinion of the property clerk, such property has no salable value, and if within thirty days after the date of mailing such notification such property is not reclaimed by its owner and removed by him from the custody of the property clerk, such property shall be disposed of by destruction or otherwise, as the Commissioners of the District of Columbia by regulation or order shall provide. (As amended Sept. 25, 1962, 76 Stat. 589, Pub. L. 87–691, § 1.)

AMENDMENTS

1962—Section 1 of act Sept. 25, 1962, amended section by adding subsection (e) thereto.

AFFECT ON REORGANIZATION PLAN NUMBERED 5, OF 1962

Section 6 of act Sept. 25, 1962 [amending this section and sections 4–159, 4–160, repealing last sentence of section 4–156, repealing section 4–156a, and enacting section 4–160a], provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

REPEAL

Section 3 of act Sept. 25, 1962, 76 Stat. 591, Pub. L. 87–691, repealed subsections (a), (b) and (c) of section 306, act June 29, 1953, 67 Stat. 101, ch. 159. Subsection (a) was set out as the last sentence of subsection (d) of section 4–156 [see main volume of Code]. Subsections (b) and (c) were set out as section 4–156a. These subsections dealt with collections of fees by property clerk and matter is now covered by section 4–159.

§ 4–156a. Repealed. Sept. 25, 1962, 76 Stat. 691, Pub. L. 87–691, § 3.

Section of act June 29, 1953, 67 Stat. 101, ch. 159, §§ 306 (b) and (c) dealt with collection of fees on impounded vehicles and deposit of collected fees in U.S. Treasury. Matter is now covered by section 4–159.

§ 4–159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.

(a) All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime or from persons alleged to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the property clerk to be fully registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police.

(b)(1) Whenever any money or property of a deceased person of a value of less than $1,000 coming into the custody of the property clerk shall remain in his custody for a period of six months or more without being claimed and repossessed by the next of kin or the legal representative of such deceased person, such money or property shall be disposed of as lost or abandoned property as provided in section 4–160 of this chapter: *Provided,* That prior to the disposition of such property of a deceased person it shall be the duty of the property clerk to ascertain whether there is pending in the United States District Court for the District of Columbia any petition seeking the appointment of a legal representative of such deceased person, and, if such a petition is pending in such court, the property clerk shall not dispose of such property until final disposition by the court of such petition: *Provided further,* That in any case where the property clerk acquires actual knowledge that a petition for the appointment of a legal representative of such deceased person has been filed or is pending in a court outside of the District of Columbia, the property clerk shall not dispose of such property until final disposition by the court of such petition.

(b)(2) Whenever any money or property of a deceased person shall be of a value of $1,000 or more and shall have remained in the custody of the property clerk for at least six months, all records pertaining to the same shall be referred by the property clerk to the Corporation Counsel of the District of Columbia for the purpose of instituting appropriate proceedings to effect the appointment of an administrator of the estate of such decedent: *Provided,* That upon expiration of the time for final settlement of such estate under law then in effect, the residue thereof in the absence of any claim by the heirs-at-law or next of kin of the decedent, as provided by law, shall be deposited into the Registry of the Probate Court, and upon the expiration of a period of three years, no demand having been made upon such funds by lawful heirs or other rightful claimants, the amount so deposited in such registry shall be deposited in the Treasury to the credit of the District of Columbia: *Provided further,* That if the administrator does not take possession of such property within three months from the date of his appointment, the property clerk may, after giving such administrator thirty days' notice by registered or certified mail, sell such property at public auction, and, after deducting the expenses of such sale, and expense incident to the maintenance of custody of such property, shall pay the remaining proceeds of such sale over to such administrator.

(c) Whenever the property clerk has custody of any property belonging to any person who has been

adjudged of unsound mind and a committee has been appointed for such person but fails to take possession of the property of such person in the custody of the property clerk within six months from the date of such committee's appointment, the property clerk shall give such committee sixty days' notice by registered or certified mail of his intention to sell such property at public auction or otherwise dispose of such property in accordance with law. If, upon the expiration of such sixty days' notice, the committee has not taken custody of such property, (a) the property clerk is authorized to sell such property at public auction, and, after deducting the expenses of the sale, expenses incident to the maintenance and custody of such property, and any amounts due the District of Columbia for care and maintenance of the adjudicated patient, shall pay the remaining proceeds of the sale over to such committee, or (b) if in the opinion of the property clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Commissioners of the District of Columbia shall, by regulation or order, determine.

(d)(1) The said Commissioners are authorized, in their discretion, to store in any commercial warehouse or garage in the District of Columbia, or in or on any facility under the jurisdiction of the District of Columbia, any property coming into the custody of the property clerk pursuant to this chapter, including vehicles impounded by any officer or member of the Metropolitan Police force.

(2) The Commissioners are authorized to fix, by regulation, the fees to be charged to reimburse the District of Columbia for the cost of services rendered by the Metropolitan Police force in taking custody of and protecting such property and for the cost of storing such property in any commercial warehouse or garage, and whenever any such property is stored in or on any facility under the jurisdiction of the District of Columbia, the Commissioners shall fix the storage fee in an amount reasonably estimated by them to be the value of the storage service rendered for each day during which such property is so stored, and to collect all such fees due and owing for such property before releasing such property to its owner or his legal representative: *Provided,* That the Commissioners are authorized, in their discretion, to waive the charging and collecting of such fees for property taken into custody as evidence, the proceeds of crime, or from persons supposed to be insane: *Provided further,* That the property clerk is authorized to sell at public auction pursuant to subsection (a) of section 4–160 of this chapter any property stored in a commercial garage or warehouse, when the storage charges for such property exceed 75 per centum of its value as determined by the property clerk, regardless of the amount of time for which such property is required by other sections of this chapter to be held by the property clerk.

(3) Fees collected by reason of this section shall be deposited in the Treasury to the credit of the District of Columbia. (R.S., D.C. § 416, May 29, 1896, 29 Stat. 191, ch. 270; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 1; Sept. 25, 1962, 76 Stat. 589, Pub. L. 87–691, § 2.)

AMENDMENTS

1962—Section 2 of act Sept. 25, 1962, amended section generally. For text of section prior to this amendment see main volume of the Code.

§ 4–160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.

(a) All property, except perishable property and animals and property of insane persons, not otherwise disposed of in accordance with section 4–159 of this chapter, that shall remain in the custody of the property clerk for not less than ninety days, except motor vehicles which shall be held for not less than sixty days, without being claimed and repossessed, shall, after having been three times advertised in a daily newspaper of general circulation published in the District of Columbia, be sold at public auction, and the proceeds of such sale, after deducting the expenses of the sale, and all other expenses incident to such custody, having been retained by the said property clerk for a period of at least ninety days without being claimed and repossessed, shall be deposited in the Treasury to the credit of the District of Columbia: *Provided,* That if in the opinion of the property clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Commissioners of the District of Columbia shall, by order or regulation, determine.

(b) Whenever the property clerk shall have in his custody any motor vehicle upon which there is a lien or liens of record in the Office of the Recorder of Deeds of the District of Columbia he shall, prior to the sale thereof pursuant to this section, notify by registered or certified mail each lienor and lienee in any such case of such custody and impending sale, and if such lienor or lienee fail to remove such property from the custody of the property clerk within thirty days from the date of the mailing of such notification, such lien or liens shall be considered to have been abandoned, and shall be thenceforth null and void. Upon being notified in writing of such fact by the property clerk, the Recorder of Deeds of the District of Columbia is authorized to indicate on his records that such lien or liens are thenceforth null and void and the property clerk is authorized to sell any such motor vehicle at public auction free and clear of such lien or liens; except that the proceeds of such sale shall be available, first, for the payment of all expenses incident to such sale and custody; second, for the payment of such liens so declared null and void; third, for payment to the owner in accordance with subsection (a) of this section; and the remainder, if any, shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) All money, except money of insane persons, that shall remain in the custody of the property clerk for six months shall be so advertised, and if not claimed and repossessed within thirty days, it shall likewise be deposited in the Treasury to the

credit of the District of Columbia. (R.S., D.C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2; Sept. 25, 1962, 76 Stat. 591, Pub. L. 87–691, § 4.)

AMENDMENTS

1962—Section 4 of act Sept. 25, 1962, amended section generally. For provisions of section prior to this amendment see main volume of the Code.

§ 4–160a. Liability of district government, its officers or employees for damages to property—Net proceeds of judgment in favor of government against warehouseman and garagekeeper for damage to property to be paid to owner—"Gross negligence" defined.

Neither the government of the District of Columbia nor any officer or employee thereof shall be liable for damage to any property resulting from the removal of such property from public space, or the transportation of such property into the custody of the property clerk, Metropolitan Police Department, nor for damage to any such property while such property is in the custody of the property clerk, Metropolitan Police Department, when such custody is maintained pursuant to the requirements of law, except that the government of the District of Columbia or any such officer or employee may be liable for damage to such property as a result of gross negligence in the removal, transportation, or storage of such property: *Provided,* That should a judgment be entered for the District of Columbia against any commercial warehouseman or garagekeeper for damage to such property in his care, recovery on such judgment, less all administrative expenses and court costs to the District of Columbia involved in such litigation, shall be paid by the District of Columbia to the owner of the damaged property as determined by the property clerk. For the purpose of this section the term "gross negligence" means a willful intent to injure property, or a reckless or wanton disregard of the rights of another in his property. (Sept. 25, 1962, 76 Stat. 591, Pub. L. 87–691, § 5.)

§ 4–179. Repealed. Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 7(a).

Section, act of Mar. 3, 1897, 29 Stat. 677, ch. 387, dealing with leaves of absence for members of Metropolitan Police force is now covered by section 4–905 to 4–909.

EFFECTIVE DATE OF REPEAL

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–183. Repealed. Aug. 19, 1964, 78 Stat. 494, Pub. L. 88–448, title IV, § 402(a)(25).

Section, act of July 11, 1947, 61 Stat. 311, ch. 226, § 2, related to employment of retired military or naval officers as director of the board in the Metropolitan Police Force.

EFFECTIVE DATE OF REPEAL

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(b) shall become effective on the date of enactment of this Act."

Chapter 2.—UNITED STATES PARK POLICE

§ 4–207. Leave of absence of members of United States Park Police.

AMENDMENT

1964—Section 6(c) of act Aug. 21, 1964, amended sections by striking out the entire text in this section, which consisted of the last sentence of section 7, of the act of May 27, 1924, 43 Stat. 174 as amended by the act of July 3, 1926, 44 Stat. 834, chapter 760, 82. Section dealt with leaves of absence of members of United States Park Police. Matter is now covered by sections 4–905 to 4–909.

EFFECTIVE DATE OF AMENDMENT

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

Chapter 4.—FIRE DEPARTMENT

Sec.

4–404a. Workweek established—Hours—Day off—Holidays—Exceptions.
4–408a. Recording annual and sick leave.
4–408b. Annual leave of officers and members of the Firefighting Division—Adjustment of accumulated leave—Formula for determination of annual or sick leave—Maximum accumulations.

§ 4–404a. Workweek established—Hours—Days off—Holidays—Exceptions.

(a)(1) Beginning with the first day of the first pay period which begins not less than one hundred and twenty days after enactment of this amendatory subsection or which begins on or after July 1, 1962, whichever is later, the Commissioners of the District of Columbia are authorized and directed to establish a workweek for officers and members of the Firefighting Division of the Fire Department of the District of Columbia which will result in an average workweek of not to exceed forty-eight hours during an administratively established workweek cycle which the Commissioners are hereby authorized to establish from time to time.

(2) The firefighting division shall operate under a two-shift system and all hours of duty of any shift shall be consecutive.

(3) The Commissioners of the District of Columbia are further authorized and directed to establish a workweek for officers and members of the Fire Department, other than those in the firefighting division of forty hours, and the hours of work in such workweek shall be performed on consecutive days in such workweek: *Provided,* That notwithstanding the provisions of this subsection, the Commissioners of the District of Columbia or their designated agent or agents may, whenever the exigencies of the Fire Department require temporary or short-term services of one or more officers or members, order such officer, officers, member, or members to perform such services.

(4) The days off duty to which each officer or member of the Fire Department is entitled shall be in addition to his annual leave and sick leave allowed by law. In the case of any shift of the Fire Department beginning on one day and extending without a break in continuity into the next day, or in the case of two shifts beginning on the same day, the Commissioners are authorized to designate

the shift which shall be the workday, and the entire shift so designated shall be considered the workday for all pay and leave purposes.

(5) If a holiday shall fall on an day off of any officer or member of the Fire Department, he shall be excused from duty on such other day as is designated by the Commissioners of the District of Columbia, and if he is required to be on duty in lieu of such day off, he shall receive compensation for such duty at the rate provided by law for duty performed on a holiday. When any shift of the Fire Department begins on the day before a holiday and extends without a break in continuity into the holiday, or begins on a holiday and extends without a breaks in continuity into the next day, the Commissioners of the District of Columbia are authorized to designate either of such shifts as the holiday workday, and the entire shift so designated shall be considered as the holiday workday for all pay and leave purposes. As used in this subsection the word "holiday" shall have the same meaning as such word has in section 4–808, and as supplemented by section 1–1210.

(6) Notwithstanding the provisions of the preceding subsection, whenever the Commissioners declare that an emergency exists of such a character as to necessitate the continuous service of all or some of the officers and members of the Fire Department, the granting of days off shall be suspended during the continuation of such emergency. Whenever the granting of days off has been suspended and discontinued pursuant to this subsection, each officer and member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty which he performs by reason of the suspension and discontinuance of his days off under this subsection. Any officer or member so performing duty shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nod shall such additional compensation be subject to deduction as provided in section 5 of the Act entitled "An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia", approved July 1, 1930, as amended. (June 19, 1948, 62 Stat. 498, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2; Oct. 5, 1961, 75 Stat. 830, Pub. L. 87–399, §§ 1, 2; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87–697, §§ 1, 2.)

References in Text

Section 12 of act Sept. 1, 1916, as amended, referred to in subsec. (f), formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section 5 of act July 1, 1930, as amended, referred to in the text, formerly classified to sections 4–503 and 4–504, was repealed by act Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5 (2), and is now covered by section 4–524.

Amendments

1962—Act Sept. 25, 1962, amended the section as follows:

Paragraph (a) was amended to read as above set out. The amendment reduces the workweek of officers and members of the Firefighting Division to "an average workweek of not to exceed forty-eight hours".

Paragraphs (b), (c), (d), (e), and (f) were redesignated as paragraphs (2), (3), (4), (5), and (6), respectively.

Paragraph (c), redesignated as paragraph (3), was amended by striking the period, the addition of a colon and proviso clause as above set out.

1961—Section 1, act Oct. 5, 1961, amended subsection (a) to read as set out in (a), (b), (c), (d), and (e). The wording of subsection (a) prior to this amendment is set out in the main volume of the Code.

Section 2 of the same act amended the first sentence of former subsection (b) to read as above set out in subsection (f), the said subsection having been redesignated as (f) by the same act.

1955—Subsec. (b) amended by act Aug. 4, 1955, which added the matter following the first sentence.

Effective Date of 1962 Amendment

Section 5 of act Sept. 25, 1962, provides as follows:

"This Act [amending sections 4–404a, 4–821 and enacting 4–408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

Effective Date of 1961 Amendment

Section 7 of act Oct. 5, 1961, provided: "This Act [amending this section and sections 4–807, 4–821, 4–904, and adding 4–408a] shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961].

Effective Date of 1955 Amendment

Section 3 of act Aug. 4, 1955, provided: "This Act [amending this section and section 4–904] shall take effect on July 1, 1955."

Transfer of Functions

Fire Chief as successor to Chief Engineer, see note under section 4–402.

Cross References

Firemen excluded from general law concerning sick leave for District employees, but included as to annual leave, see § 1–312.

Formula for recording annual and sick leave, see § 4–408a.

Other provisions concerning leave, see § 4–408.

Policemen and firemen's retirement and disability, see § 4–521 et seq.

§ 4–408. Repealed. Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 7(b).

Section, last sentence of first par. under heading "For the Fire Department", act of Mar. 3, 1897, 29 Stat. 677, ch. 387, dealing with leaves of absence for members of Fire Department is now covered by sections 4–905 to 4–909.

Effective Date of Repeal

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–408a. Recording annual and sick leave.

(a) For the purpose of recording annual and sick leave on the hourly basis for officers and members

of the firefighting division of the Fire Department of the District of Columbia, the workday of any workweek shall be considered to be twelve hours.

(b) For the purposes of recording on an hourly basis annual and sick leave taken by officers and members of the firefighting division, the following formula shall be used:

(1) During the day shift of ten hours, one and two-tenths hours of leave shall be charged for each hour taken.

(2) During the night shift of fourteen hours, twelve-fourteenths of an hour of leave shall be charged for each hour taken, calculated to the nearest fractional tenth.

(Oct. 5, 1961, 75 Stat. 832, Pub. L. 87–399, § 6.)

Effective Date

Act Oct. 5, 1961, enacting this section and amending sections 4–404a, 4–807, 4–821, and 4–904 provided as follows:

"This Act shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961.]

§ 4–408b. Annual leave of officers and members of the Firefighting Division—Adjustment of accumulated leave—Formula for determination of annual or sick leave—Maximum accumulations.

(a) In lieu of the annual leave to which officers and members of the Firefighting Division of the Fire Department of the District of Columbia are entitled under the provisions of section 5, U.S.C. 2062, as amended, such officers and members shall be entitled to annual leave which shall accrue as follows:

(1) Four and eight-tenths hours for each full biweekly pay period in the case of officers and members with less than three years' service;

(2) Seven and five-tenths hours for each full biweekly pay period in the case of officers and members with three but less than fifteen years' service;

(3) Nine and six-tenths hours for each biweekly pay period in the case of officers and members with fifteen years' or more service.

(b) Accumulated annual leave to the credit of each officer and member of such Firefighting Division shall be adjusted by applying a four-fifths factor so that each officer and member of such Firefighting Division shall be given credit for four-fifths of a day of leave for each day of such accumulated annual leave, and thereafter accumulated annual leave credited to him pursuant to the Annual and Sick Leave Act of 1951, as amended, shall be similarly adjusted when an officer or member is transferred to the Firefighting Division from another agency or from another division of the Fire Department.

(c) When an officer or member of such Firefighting Division is transferred to another agency or to another division of the Fire Department, whose employees are entitled to annual leave with pay pursuant to the Annual and Sick Leave Act of 1951, as amended, the reverse of the formula in subsection (b) shall be applied for the purpose of adjusting accumulated annual leave.

(d) For computation on an hourly basis, all adjusted days of annual leave or fractions thereof, as provided in subsections (b) and (c) of this section, and days of sick leave shall be multiplied by twelve to determine the number of hours of annual or sick leave to which each such officer or member of such Firefighting Division shall be entitled, and the number of hours of annual or sick leave shall be divided by twelve to determine the number of days, or fraction thereof, of annual or sick leave to which such officer or member of such Firefighting Division shall be entitled.

(e) Notwithstanding any provision in any other law, the amount of annual leave accumulated on the effective date of this section, if thirty days or more, shall, upon conversion to the new total in accordance with this section, be the maximum accumulation authorized: *Provided,* That if the amount of annual leave accumulated before the conversion is less than thirty days on the effective date of this section, then, after conversion to the new total, leave which is not used shall accumulate for use in succeeding years until it totals no more than twenty-four days at the beginning of the first complete biweekly pay period. (Sept. 25, 1962, 76 Stat. 596, Pub. L. 87–697, § 4.)

References in Text

The Annual and Sick Leave Act of 1951, referred to in text is set out in 5 U.S.C., chapter 23, and the other sections described in the note to section 5 U.S.C. 2061.

Effective Date

Section 5 of act Sept. 25, 1962, provides as follows: "This Act [amending sections 4–404a, 4–821 and enacting 4–408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

Cross References

Other provisions relating to annual leave, see §§ 1–312, 4–408, 4–404a, and 4–821.

§ 4–409a. Restrictions on members of Fire Department leaving District—Residence—Sick leave.

No member of the Fire Department of the District of Columbia shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission. Nothing in this section shall be construed to limit the right of officers and members of the Fire Department to reside anywhere within the Washington, District of Columbia, metropolitan district. (July 25, 1956, 70 Stat. 647, ch. 726, § 2; Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 6(f).)

Amendments

1964—Section 6(f) of the act of Aug. 21, 1964, amended section by striking the following three sentences: "Thirty days shall be the term of total sick leave in any one year without disallowance of pay. Leaves of absence with pay of members of the Fire Department of the District of Columbia may be extended in cases of illness or injury incurred in line of duty, upon recommendation of the board of surgeons approved by the Commissioners, for such period exceeding thirty days in any one year as in the judgment of the Commissioners may be necessary. For the purposes of this subsection "any one year" shall mean a year from January 1 to December 31, both dates inclusive."

See new sections, 4–905 to 4–909.

Effective Date of Amendment

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C.

2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–414. Reciprocal agreements for mutual aid.

* * * * *

(b) The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall: (1) waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement; (2) indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement.

* * * * *

(Aug. 14, 1950, 64 Stat. 441, ch. 706, §§ 1–4; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88–473, § 1.)

AMENDMENT

1964—Act Aug. 21, 1964, amended section by adding indemnity clause above set.

Chapter 5.—POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

Sec.

4–522. United States Secret Service Division—Transfer of Civil Service retirement funds—Credit for prior service with other police units.
4–527. Retirement for disability while performing or not performing duty.
4–539. Annuity rights of widows and children of officers and members who died in service prior to October 1, 1956—Existing benefits not reduced.

§ 4–522. United States Secret Service Division—Transfer of civil service retirement funds—Credit for prior service with other police units.

Whenever any member of the United States Secret Service Division has actively performed duties other than clerical for ten years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund created by the Act of May 22, 1920, to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under sections 4–521 to 4–535, and he shall be entitled to the same benefits as the other members to whom such sections apply. Any member of the United States Secret Service Division appointed from the White House Police force and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with the Metropolitan Police force, the United States Park Police force, or the White House Police force toward the required ten years or more service. (Sept. 1, 1916, ch. 433, § 12(b), as added Aug. 21, 1957, 71 Stat. 392, Pub. L. 85–157, § 3; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–476, § 1.)

AMENDMENT

1964—Section 1 of act Aug. 21, 1964, amended section by adding last sentence thereto.

§ 4–527. Retirement for disability while performing or not performing duty.

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 percentum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85–157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87–857, § 1.)

AMENDMENT

Act Oct. 23, 1962, amended section by designating first paragraph as (1) and by adding paragraph (2).

NOTES TO DECISIONS

Abuse of discretion .50
Evidence 4
Record of injury 1
Service connected disability 4.50
Summary judgment 451

.50. Abuse of discretion

Where first count asked for a mandatory injunction requiring Commissioners of District of Columbia to pay policeman a larger retirement allowance, and second count asked for a declaratory judgment that he was entitled to the larger allowance, District Court's denial of Commissioners' motion for summary judgment on first count and granting it on second count was abuse of discretion, and hence the judgment would be set aside and case remanded for further proceedings. *F. C. Zangardi* v. *W. N. Tobriner et al.* (1964, 330 F. 2d 224, 117 U.S. App. D.C. 350).

1. Record of injury

As contained in District of Columbia fireman's personnel file, cryptic notation "3–2–48 Lumbo-sacral strain, Box 9322", when shown to refer to fire at which fireman claimed to have injured his back while carrying a 275–300 pound body of a fire victim, required reconsideration of fireman's claim to retirement on basis of disability incurred in performance of duties, where retirement board had granted retirement for nonservice-connected disability on ground of lack of record of injury in personnel file. *W. D. Lovell* v. *W. N. Tobriner et al., etc.* (1962, 310 F. 2d 870, 114 U.S. App. D.C. 65).

4. Evidence

Evidence did not support finding that District of Columbia police officer's disabling arthritis had not been incurred in performance of duty as motorcycle officer.

J. R. Hyde v. *W. N. Tobriner, et al.* (1964, 329 F. 2d 879, 117 U.S. App. D.C. 311).

Evidence in officers' retirement cases must be viewed in light more favorable to applicant seeking relief than in usual type of civil action, in consideration of humane purpose of retirement laws. *Id.*

4.50. Service connected disability

Where record concerning policeman's retirement contained no evidence contrary to physician's testimony that policeman's disability, consisting of marked, mixed type of neurosis with anxiety and depressive features and multiple psychogenic complaints following severe attack of bulbar polio, was connected with performance of his police duty, there was no basis in record for Commissioners' determination that disability had not been incurred in line of duty. *T. L. Souder* v. *W. N. Tobriner et al.* (1963, 314 F. 2d 272, 114 U.S. App. D.C. 267).

4.51. Summary judgment

Relief from summary judgment in favor of Commissioners of District of Columbia on basis of administrative record involving policeman's right to retire for disability alleged to have occurred in performance of his duty was not available to court almost 16 months thereafter under federal rule. *W. N. Tobriner et al.*, v. *D. Chefer* (1964, 335 F. 2d 281, — U.S. App. D.C. —).

Where almost 16 months after trial court granted summary judgment for Commissioners of District of Columbia on basis of administrative record involving policeman's right to retire for disability alleged to have occurred in performance of his duty court sua sponte vacated such order and ordered this case set down for hearing, vacating order exceeded court's jurisdiction. *Id.*

§ 4–528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.

NOTES TO DECISIONS

2. Right to retirement.

Fireman suspended for misconduct was still a "member" of fire department within statute providing that any member attaining age of 50 years and completing 20 years of service may state intention to retire and shall be entitled to annuity and fireman, who had not been discharged, had absolute right to elect retirement. *E. J. Daigle* v. *Robert E. McLaughlin et al.* (1961, 193 F. Supp. 902).

§ 4–529. Involuntary separation from service.

TRANSFER OF FUNCTIONS

Reorg. Ord. No. 47, as amended June 21, 1962, transferred the authority to express a judgment as to the disability of a member from performing further duty in his department to the Police and Firemen's Retirement and Relief Board. This authority was formerly vested in the Board of Police and Fire Surgeons. This amendment also outlined certain duties of the Board of Police and Fire Surgeons. The amendment to the order is set out in the appendix to Title 1.

§ 4–533. Duties of Commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings.

TRANSFER OF FUNCTIONS

Reorg. Ord. No. 31 was amended on June 21, 1962, delegating the authority set forth in sec. 4–529 to express a judgment as to the disability of a member, exclusively to the Police and Firemen's Retirement and Relief Board and also outlining the evidence to be considered by the Board in making findings of fact. The amendments to the order are set out in the appendix to Title 1.

§ 4–539. Annuity rights of widows and children of officers and members who died in service prior to October 1, 1956—Existing benefits not reduced.

Each widow or child who, on or after the effective date of this section, was receiving or is now receiving or shall hereafter be entitled to receive relief or annuity by reason of service in the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the White House Police force, or the United States Secret Service Division, of a deceased former officer or member who died in the service of any such organization prior to the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1957, or who retired prior to such effective date, shall be entitled to benefits computed in accordance with the provisions of section 4–531.

Nothing in this section shall be deemed to reduce the relief or retirement compensation any person receives, or is entitled to receive, on the date of the enactment of this section. (Aug. 24, 1962, 76 Stat. 402, Pub L. 87–601, §§ 1, 2.)

REFERENCE IN TEXT

The effective date of Firemen's Retirement and Disability Act Amendments of 1957 is Oct. 1, 1956. The said act is classified to sections 4–521 to 4–538.

EFFECTIVE DATE OF ACT AUG. 24, 1962

Section 3 of act Aug. 24, 1962, provides as follows: "The effective date of this Act shall be the first day of the first month following the date of enactment."

Chapter 8.—SALARIES

Sec.

4–823c. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act October 24, 1962, applies—Service and longevity steps.
4–823d. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Sept. 2, 1964, applies.
4–826a. Classification of aide to Fire Marshal.

§ 4–807. Additional compensation for working on holidays.

Under regulations promulgated by the Commissioners of the District of Columbia each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation: *Provided,* That for the purpose of sections 4–807 to 4–809, each such officer or member who works eight hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one-eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting thirty minutes or more as a full hour: *Provided further,* That the total compensation to be paid any such officer or member for duty performed on a holiday shall not exceed an amount equal to twice the daily rate of pay to which such officer or member shall be entitled for performing one regular tour of duty on a day other than a holiday: *And provided further,* That no such officer or member shall be entitled to additional compensation for such holiday work for any day for which he is entitled to receive additional compensation under the provisions of subsection (e) of section 4–904. So much of the compensation for such holiday work as is in excess of the regular pay for such day shall not be considered as salary for the purpose

of computing deductions for life insurance or for computing annuity payments under the provisions of the Policemen and Firemen's Retirement and Disability Act (sections 4–521 to 4–535), nor shall such excess compensation be subject to deduction as provided in sections 4–521 to 4–535. Appropriations for personal services for the Metropolitan Police force, the Fire Department of the District of Columbia, the White House Police force, and the United States Park Police force shall be available for payment of the additional compensation authorized by sections 4–807 to 4–809. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85–533, § 4(a); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87–399, § 4.)

AMENDMENT

1961—Section 4, act Oct. 5, 1961, amended this section to read as above set out. The provisions of the section prior to this amendment are set out in the main volume of this Code.

EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4–404a.

§ 4–821. Computation of rates of compensation.

* * * * *

(b) Whenever for any such purpose it is necessary to convert a basic annual rate established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958 to basic biweekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by fifty-two or twenty-six, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by five or ten, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by two to derive a one-half daily rate; and

(D) In the case of the Metropolitan Police force, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

(E) In the case of the Firefighting Division of the Fire Department of the District of Columbia—

(i) a biweekly rate shall be divided by two to derive a weekly rate;

(ii) the weekly rate shall be divided by the number of workdays in the average established workweek to arrive at a daily rate;

(iii) a daily rate shall be divided by two to derive a one-half daily rate; and

(iv) an hourly rate shall be determined by dividing the daily rate of pay by twelve, except for the purpose of computation of holiday pay.

(F) In the case of officers and members of divisions of the Fire Department of the District of Columbia other than the firefighting division, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent. (As amended Oct. 5, 1961, 75 Stat. 831, Pub. L. 87–399, § 5; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87–697, § 3.)

AMENDMENTS

1962—Section 3 of act Sept. 25, 1962, amended clause (E) of subsection (b) to read as above set out. Clause (E) before this amendment read as follows: "(E) in the case of the firefighting division of the Fire Department of the District of Columbia, except with respect to computation of holiday pay, the weekly or biweekly rate shall be divided by 56 or 112, as the case may be, to derive an hourly rate."

1961—Section 5, act Oct. 5, 1961, amended clause (D) of subsection (b) to read as above set out under clauses (D), (E), and (F). The wording of clause (D) prior to amendment is set out in the main volume of the Code.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of act Sept. 25, 1962, provides as follows: "This Act [amending sections 4–404a, 4–821 and enacting 4–408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4–404a.

§ 4–823. Salary schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

The annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

Salary class and title	Service step						Longevity step		
	1	2	3	4	5	6	7	8	9
Class 1:									
Subclass (a)	$6,010	$6,330	$6,650	$6,970	$7,290	$7,610	$7,930	$8,250	$8,570
Fire private.									
Police private.									
Subclass (b)	6,300	6,620	6,940	7,260	7,580	7,900	8,220	8,540	8,860
Private assigned as:									
Technician I.									
Plainclothesman.[1]									
Subclass (c)	6,590	6,910	7,230	7,550	7,870	8,190	8,510	8,830	9,150
Private assigned as:									
Technician II.									
Station clerk.									
Motorcycle officer.									
Class 2:									
Subclass (a)	7,290	7,610	7,930	8,250	----------	----------	8,570	8,890	9,210
Fire inspector.									
Subclass (b)	7,580	7,900	8,220	8,540	----------	----------	8,860	9,180	9,500
Fire inspector assigned as:									
Technician I.									
Subclass (c)	7,870	8,190	8,510	8,830	----------	----------	9,150	9,470	9,790
Fire inspector assigned as:									
Technician II.									

See footnote at end of table.

SALARY SCHEDULE—Continued

Salary class and title	Service step						Longevity step		
	1	2	3	4	5	6	7	8	9
Class 3	$7,900	$8,220	$8,540	$8,860			$9,180	$9,500	$9,820
Assistant marine engineer.									
Assistant pilot.									
Detective.									
Class 4:									
Subclass (a)	8,185	8,505	8,825	9,145			9,465	9,785	10,105
Fire sergeant.									
Police sergeant.									
Subclass (b)	8,655	8,975	9,295	9,615			9,935	10,255	10,575
Detective sergeant.									
Subclass (c)	8,765	9,085	9,405	9,725			10,045	10,365	10,685
Police sergeant assigned as: Motorcycle officer.									
Class 5	10,000	10,400	10,800	11,200			11,600	12,000	
Fire lieutenant.									
Police lieutenant.									
Detective lieutenant.									
Class 6	11,000	11,400	11,800	12,200			12,600	13,000	
Marine engineer.									
Pilot.									
Class 7	12,000	12,500	13,000	13,500			14,000	14,500	
Fire captain.									
Police captain.									
Detective captain.									
Class 8	14,000	14,500	15,000	15,500			16,000	16,500	
Assistant superintendent of machinery.									
Battalion fire chief.									
Deputy fire marshal.									
Police inspector.									
Class 9:									
Subclass (a)	16,500	17,000	17,500	18,000			18,500	19,000	
Deputy fire chief.									
Deputy chief of police.									
Fire marshal.									
Superintendent of machinery.									
Subclass (b)	17,500	18,000	18,500	19,000			19,500	20,000	
Deputy chief assigned as the: Assistant fire chief. Police executive officer. Commanding officer of the White House Police. Commanding officer of the U.S. Park Police.									
Class 10	21,000	21,500	22,000	22,500			23,000	23,500	
Fire chief.									
Chief of police.									

[1] Service as such for over 60 consecutive calendar days.

(Aug. 1, 1958, 72 Stat. 481, Pub. L. 85–584, Title I, § 101; Oct. 24, 1962, 76 Stat. 1239, Pub. L. 87–882, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(6) Sept. 2, 1964, 78 Stat. 880, Pub. L. 88–575, Title I, § 101.)

AMENDMENTS

1964—Section 101 of act Sept. 2, 1964, amended section to read as above set out.

Section 306(i)(6) of act Aug. 14, 1964, amended the salary schedule relating to the compensation of the Fire Chief and the Chief of Police to read as above set out.

1962—Section 1 of act Oct. 24, 1962, amended section generally.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5 of act Oct. 24, 1962, provides as follows: "This Act [amending § 4–823, enacting § 4–823c, amending § 4–826, enacting § 826a, amending §§ 4–830 and 4–832 and repealing § 4–823a] shall take effect as of the first day of the first pay period beginning after January 1, 1963."

GROUP INSURANCE PROVISIONS OF ACT SEPT. 2, 1964

Section 107 of act Sept. 2, 1964, provided: "For the purpose of determining the amount of insurance for which an officer or member is eligible under the Federal Employees' Group Life Insurance Act of 1954, all changes in rates of compensation or salary which result from the enactment of this title shall be held and considered to be effective as of the date of enactment of this Act."

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204.

RETROACTIVE COMPENSATION UNDER ACT, SEPT. 2, 1964, TITLE I

Section 106 (a) and (b), of act Sept. 2, 1964, provided: "(a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the District of Columbia Government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act for services rendered during such period, and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended [5 U.S.C. 61f–61k], for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia."

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

§ 4–823a. Repealed. Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 4.

Section of act Sept. 8, 1960, 74 Stat. 868, Pub. L. 86–734, § 1, provided for salary increases of 7.5 per centum of basic compensation.

For effective date of repeal, see note to section 4–823.

§ 4–823c. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act October 24, 1962, applies—Service and longevity rates.

The rates of basic compensation of officers and members to whom the amendment made by section 4–823 apply shall be adjusted in accordance with this section, and on and after the effective date of this Act section 4–824 shall not apply to any such officer or member whose rate of basic compensation is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(a) Each officer and member receiving basic compensation immediately prior to the effective date of this Act at one of the scheduled service or longevity rates of a class or subclass in the salary schedule in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall receive a rate of basic compensation at the corresponding scheduled service or longevity rate in effect on and after the effective date of this Act, except that:

(1) Each private who immediately prior to the effective date of this Act was serving in service step 6, or longevity steps 7 or 8 in any subclass in class 1, and had a total of thirteen or more years of service as of the first day of the first pay period which began after January 1, 1958, shall, on the effective date of this Act, be advanced from service step 6 to longevity step 7, or from longevity step 7 to longevity step 8, or from longevity step 8 to longevity step 9, as the case may be, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving. Any active service immediately prior to the effective date of this Act which each such private has rendered in the service step or longevity step from which he is being advanced will be credited to him for subsequent advancement purposes under the provisions of section 4–832 except that such active service provision shall not apply to any private assigned as detective, class 1, subclass (c), immediately prior to the effective date of this Act.

(2) Each private who, immediately prior to the effective date of this Act, was serving in a position bearing the title of station clerk in class 1, subclass (b), shall be placed in the corresponding title in class 1, subclass (c), and shall receive basic compensation (1) at the service step or longevity step in subclass (c) corresponding to that service step or longevity step in which he was serving immediately prior to the effective date of this Act, or (2) at the longevity step to which he is entitled under the provisions of paragraph (1) of subsection (a) of this section. Any active service which each private so assigned as station clerk has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4–829 or section 4–832 as the case may be.

(3) Each private who immediately prior to the effective date of this Act was serving in a position bearing the title of detective or precinct detective in class 1, subclass (c) or subclass (d), shall on the effective date of this Act, after the application of the provisions of paragraph (1) of subsection (a) of this section, be placed in and receive basic compensation at a scheduled rate in class 3, with the title of detective as follows:

From—	To—
Detective, class 1, subclass (c):	Detective, class 3:
Service steps 1, 2, 3, and 4	Service step 1.
Service step 5	Service step 2.
Service step 6	Service step 3.
Longevity step 7	Service step 4.
Longevity step 8	Longevity step 7.
Longevity step 9	Longevity step 8.

From—	To—
Precinct detective, class 1, subclass (d):	Detective, class 3:
Service steps 1, 2, and 3	Service step 1.
Service step 4	Service step 2.
Service step 5	Service step 3.
Service step 6	Service step 4.
Longevity step 7	Longevity step 7.
Longevity step 8	Longevity step 8.
Longevity step 9	Longevity step 9.

In computing the time served by each officer or member so assigned from detective, class 1, subclass (c), to detective, class 3, on the effective date of this Act for purposes of advancement to the next higher scheduled service step or longevity step as provided in section 4–829 or 4–832, as the case may be, such time shall commence as of the effective date of this Act. Any active service which each officer or member so assigned from precinct detective, class 1, subclass (d), to detective, class 3, has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4–829 or section 4–832, as the case may be.

(4) Each private who immediately prior to the effective date of this Act was serving in a position bearing the title of detective sergeant in class 1, subclass (e), shall on the effective date of this Act, after the application of the provisions of paragraph (1) of subsection (a) of this section be placed in the corresponding title in class 4, subclass (b), and shall receive the scheduled rate of basic compensation at a service step or longevity step as follows:

From—	To—
Detective sergeant, class 1, subclass (e):	Detective sergeant, class 4, subclass (b):
Service steps 1, 2, and 3	Service step 1.
Service step 4	Service step 2.
Service step 5	Service step 3.
Service step 6	Service step 4.
Longevity step 7	Longevity step 7.
Longevity step 8	Longevity step 8.
Longevity step 9	Longevity step 9.

Any active service which each officer or member so assigned as detective sergeant has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under provisions of section 4–829 or section 4–832, as the case may be.

(5) Each officer and member who, immediately prior to the effective date of this Act, was in class 3, subclass (a), as corporal, or in class 3, subclass (b), as corporal assigned as motorcycle officer, shall, on the effective date of this Act be placed in and receive basic compensation at a scheduled rate in class 4, subclass (a), or class 4, subclass (c), as the case may be, with the title of sergeant as follows:

From—	Sergeant, class 4, To—
Corporal, class 3, subclass (a):	subclass (a):
Service steps 1 and 2	Service step 1.
Service step 3	Service step 2.
Service step 4	Service step 3.
Longevity step 7	Service step 4.
Longevity step 8	Longevity step 7.
Longevity step 9	Longevity step 8.

From—	To—
Corporal assigned as motorcycle officer, class 3, subclass (b):	Sergeant assigned as motocycle officer, class 4, subclass (c):
Service steps 1 and 2	Service step 1.
Service step 3	Service step 2.
Service step 4	Service step 3.
Longevity step 7	Service step 4.
Longevity step 8	Longevity step 7.
Longevity step 9	Longevity step 8.

In computing the time served by each officer or member so assigned from corporal to sergeant or from corporal to sergeant assigned as motorcycle officer on the effective date of this Act for purposes of advancement to the next higher scheduled service step or longevity step as provided in section 4–829 or 4–832, as the case may be.

(6) Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act, and who was a sergeant prior to July 1, 1953, shall be advanced to and shall receive the scheduled rate of basic compensation for longevity step 9 in class 4. Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act and who was promoted to sergeant after June 30, 1953, and prior to the effective date of the District of Columbia Police and Firemen's Salary Act of 1958, shall, if immediately prior to the effective date of this Act he was serving in longevity step 7 or service step 4 or any lower service step, be advanced to the second higher scheduled step in class 4 above such step in which he was so serving or if, immediately prior to the effective date of this Act he was serving in longevity step 8 he shall be advanced to longevity step 9 in class 4, and shall receive the scheduled rate of basic compensation for the step to which he is advanced. Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act and who was promoted to sergeant on or after the effective date of the District of Columbia Police and Firemen's Salary Act of 1958, shall be advanced to and receive the scheduled rate of basic compensation for the next higher scheduled step in class 4. Any active service which each such sergeant has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4–829 or section 4–832, as the case may be.

(7) Each officer or member receiving basic compensation at scheduled longevity step 9, in classes 5 though 10, respectively, of the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall be placed in and receive the rate of basic compensation at the scheduled longevity step 8, in classes 5 through 10, respectively, of the above schedule.

(Oct. 24, 1962, 76 Stat. 1240, Pub. L. 87–882, § 2.)

REFERENCES IN TEXT

The District of Columbia Police and Firemen's Salary Act of 1958, as amended, referred to in text, is set out in sections 4–823 to 4–837.

"This Act" referred to in text [act Oct. 24, 1962, Pub. L. 87–882], is this section, the amendments to sections 4–823, 4–826, 4–830, and 4–832, the enactment of 4–826a, and the repeal of section 4–823a.

EFFECTIVE DATE OF 1962 ACT

Section 5 of act Oct. 24, 1962, provides as follows: "This Act [enacting this section, amending sections 4–823, 4–826, 4–830 and 4–832, and enacting section 4–826a and repealing section 4–823a] shall take effect as of the first day of the first pay period beginning after January 1, 1963."

EFFECTIVE DATE OF THE DISTRICT OF COLUMBIA POLICE AND FIREMEN'S SALARY ACT OF 1958

Section 508(a) of act Aug. 1, 1958, Pub. L. 85–584, provided that: "This Act shall take effect as of the first day of the first pay period which begins after January 1, 1958."

§ 4–823d. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Sept. 2, 1964, applies.

The rates of basic compensation of officers and members to whom the amendment made by section 4–823 apply shall be adjusted in accordance with this section, and on and after the effective date of this title, section 4–823c, shall not apply to any such officer or member whose rate of basic compensation is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(1) Except as otherwise provided in paragraph (2), each officer and member receiving basic compensation immediately prior to the effective date of this title at one of the scheduled service or longevity rates of a class or subclass in the salary schedule in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall receive a rate of basic compensation at the corresponding scheduled service or longevity rate in effect on and after the effective date of this title.

(2) Each private in service step 6, longevity step 7, or longevity step 8 in any subclass in class 1, upon completing a minimum of twenty-one years of continuous service as a private, including service in the Armed Forces of the United States but excluding any period of time determined not to have been satisfactory service, shall be advanced

to longevity step 9 in class 1, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving. (Sept. 2, 1964, 78 Stat. 881, Pub. L. 88–575, Title I, § 102.)

REFERENCES IN TEXT

The District of Columbia Police and Firemen's Salary Act of 1958, as amended, referred to in text, is set out in sections 4–823 to 4–837.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

§ 4–825. Positions to be included as Technician I.

In initially adjusting salaries, the following positions shall be included as Technician I in Sub-Class (b) of Class 1 of the schedule in section 4–823:

(a) Chief Photographer, Fire Department;

(b) Regular first driver-operator or tillerman of a Fire Department hose wagon, pumper, aerial ladder truck, or rescue squad: *Provided,* That on and after the effective date of this proviso, privates in the Fire Department, while assigned as ambulance drivers may, in the discretion of the Commissioners, be placed in subclass (b) or subclass (c) of class 1 in accordance with section 4–828: *Provided further,* That any private assigned as an ambulance driver who on the effective date of this proviso is designated as 'Technician 1' in subclass (b), class 1, shall continue in subclass (b), class 1, until action is taken to change his subclass placement in accordance with the preceding proviso or such assignment is terminated. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, Title II, § 202; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88–575, Title I, § 103.)

AMENDMENTS

1964—Section 103 amended subsection (b) by striking "rescue squad, or fire department ambulance", and insert in lieu "or rescue squad" and adding the two proviso clauses.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [Amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

§ 4–826. Positions to be included as Technician II.

In initially adjusting salaries, the following positions shall be included as Technician II in Sub-Class (c) of Class 1 of the schedule in section 4–823:

(a) Chief Radio Technician for the Fire Department;

(b) Aide to the Fire Chief, Deputy Chief, Battalion Fire Chief, or Superintendent of Machinery. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, § 203; Oct. 24, 1962, 76 Stat. 1242, Pub. L. 87–882, § 3(a).)

AMENDMENT

1962—Act Oct. 24, 1962, section 3(a) amended section by striking out the words, "Fire Marshal."

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

§ 4–826a. Classification of aide to Fire Marshal.

The aide to the Fire Marshal shall be included as a fire inspector in class 2, subclass (a). (Aug. 1, 1958, Pub. L. 85–584, § 204, as added, Oct. 24, 1962, 76 Stat. 1242, Pub. L. 87–882, § 3(b).)

EFFECTIVE DATE

See note to section 4–823.

§ 4–829. Advancement in compensation after initial salary adjustment—Exception—Condition for advancement—Crediting of satisfactory service.

* * * * *

(c) Each officer and member serving in steps 1, 2, or 3 of Sub-Classes (a), (b), or (c) of Class 1 shall be advanced in compensation successively to the next higher service step rate for his current Sub-Class at the beginning of the first pay period immediately subsequent to the completion of fifty-two calendar weeks of active service in his class if he has a current performance rating of "satisfactory" or better.

* * * * *

(As amended Sept. 2, 1964, 78 Stat. 888, Pub. L. 88–575, Title I, § 104.)

AMENDMENT

1964—Section 104 of act Sept. 2, 1964, amended subsection (c) by striking "(c), (d), or (e)" and inserting in lieu "or (c)".

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

§ 4–830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.

Any officer or member who is promoted or transferred to a higher class shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds his existing rate of compensation by not less than one step increase of the class from which he is promoted or transferred: *Provided,* That any such officer or member serving in a subclass other than subclass (a) of any class (who is not assigned as a detective sergeant in class 4, subclass (b)) shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds by one step increase the rate shown for subclass (a) in the same step in which he was serving in the class from which promoted: *Provided further,* That such scheduled rate in the higher class shall not be less than his existing rate of pay. If the existing rate of compensation of an officer or member is above the maximum longevity step increase in the class from which he is promoted or transferred and there is no rate in the higher class to which he is promoted or transferred, which is at least one step increase above his existing rate, such officer or member shall receive the maximum longevity rate of such higher class or his existing rate, whichever is greater. Any officer or member in any class who is assigned or transferred to any Sub-Class within the same Class shall be placed in the same service or longevity step in such Sub-Class as that which he was in immediately prior to being so assigned or transferred. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85–584, § 304; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 3(c).)

AMENDMENT

1962—Section 3(c) of act Oct. 24, 1962, amended the section by adding the proviso clauses to the first sentence.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

§ 4–832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4–4823 and 4–824 to 4–837.

* * * * *

(a)(2) Not more than three successive longevity step increases may be granted to any officer or member in classes 1 through 4, nor more than two successive longevity step increases may be granted to any officer or member in classes 5 through 10; nor shall any officer or member be granted a longevity step increase above the maximum scheduled longevity step in the subclass in which he is serving or, if there are no subclasses in his class, in the class in which he is serving.

* * * * *

(c) Notwithstanding any other provision of this or any other law, each deputy chief of the Metropolitan Police force and of the Fire Department of the District of Columbia shall, upon completion of thirty years of continuous service on the police force or fire department, as the case may be, including service in the Armed Forces of the United States, but excluding any period of time determined not to have been satisfactory service, be placed in, and receive basic compensation at the highest longevity step in the class or subclass to which his position is assigned in the schedule of rates established by section 4–823. Nothing in this subsection shall be construed to authorize the payment of any retroactive compensation.

* * * * *

(As amended Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 3(d); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88–575, Title I, § 105.)

AMENDMENTS

1964—Section 105 of act Sept. 2, 1964, amended section by adding subsection (c).

1962—Section 3(d) of act Oct. 24, 1962, amended paragraph (2) of subsection (a) to read as above set out. For provisions of this paragraph prior to this amendment see main volume of the Code.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.
4–904. Five-day week established for officers and members of Metropolitan Police, Fire Department of the District of Columbia, United States Park Police and White House Police—Suspension during emergencies—Additional compensation.
4–905 Applicability of Annual and Sick Leave Act of 1951, to officers and members of the Metropolitan Police Force, the Fire Department, the United States Park Police and the White House Police Force.
4–906. Initial sick leave balance—Computation of—Maximum number of days.
4–907. Initial sick leave balance applicable to Firefighting Division of Fire Department—Computation of—Maximum number of days.
4–908. "Service" defined for purpose of computing the initial sick leave balance.
4–909. Injury or illness resulting from the performance of duty—Sick leave not to be charged—Rules and Regulations.

§ 4–904. Five-day week established for officers and members of Metropolitan Police, Fire Department of the District of Columbia, United States Park Police and White House Police—Suspension during emergencies—Additional compensation.

* * * * *

(e) For each day a vacancy exists in the personnel strength for which funds are appropriated by applicable appropriation acts current in any fiscal year in any particular rank of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, the Chief of Police, the Fire Chief, the Secretary of the Interior, and the Chief of the Secret Service Division may permit an officer or member of their respective forces of such rank voluntarily to perform duty on any day off granted under this section. Each such officer or member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty voluntarily performed under this subsection, such additional compensation to be paid from current appropriations. Any officer or member so volunteering to perform duty on a day off shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in such section. (As amended, Oct. 5, 1961, 75 Stat. 831, Pub. L. 87–399, § 3.)

REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in subsection (e), is set out in sections 4–521 to 4–535.

AMENDMENT

1961—Section 3, act Oct. 5, 1961, amended subsection (e) as follows:

(a) By inserting "the Fire Department of the District of Columbia" after "Metropolitan Police force,"; (b) by striking "Major and Superintendent of Police,"; and inserting in lieu thereof "Chief of Police, the Fire Chief,"; and (c) by striking therefrom "section 5 of the Act entitled 'An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia', approved July 1, 1930, as amended", and inserting in lieu thereof "such section".

EFFECTIVE DATE OF 1961 AMENDMENT

See note to section 4–404a.

Cross Reference

For duties and size of White House Police Force, see 3 U.S.C. 202, 203.

§ 4–905. Applicability of Annual and Sick Leave Act of 1951, to officers and members of the Metropolitan Police Force, the Fire Department, the United States Park Police and the White House Police Force.

On and after the effective date of this Act the sick leave provisions of the Annual and Sick Leave Act of 1951 (65 Stat. 679) shall, except as otherwise provided in this Act, be applicable to officers and members of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police force and the White House Police force. (Aug. 21, 1964, 78 Stat. 582, Pub. L. 88–471, § 1.)

References in Text

The Annual and Sick Leave Act of 1951, is the Act of Oct. 30, 1951, ch. 631, 65 Stat. 679 etc. The said act is also described in the note to section 5 U.S.C. 2061 under the heading, "Short Title".

"This Act" referred in the text is the act set out in section 4–905 to 4–909; as amendments of sections 4–207 and 4–409a, and the repeals of sections 4–179 and 4–408, also as the repeal of section 5 U.S.C. 2061(b)(3), and amendments of 5 U.S.C. 2063(a)(c) and 5 U.S.C. 2064(e).

Effective Date

Section 8 of act Aug. 21, 1964 provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–906. Initial sick leave balance—Computation of—Maximum number of days.

Each officer and member of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia (other than officers and employees of the firefighting division), the United States Park Police force, or the White House Police force so employed on the effective date of this Act shall be credited with an initial sick leave balance, which shall be computed as follows: The total length of service in terms of years, months, and days shall be determined and for each full year of such service, such officer or member shall be credited with five days of sick leave; any period of such service amounting to less than one full year shall be divided into biweekly pay periods and for each such full biweekly pay periods, such officer or member shall be credited with sick leave in the amount of five twenty-sixths of a day, but no credit shall be given for any remaining portion of such total service amounting to less than one full biweekly pay period. In any case in which the total amount of such sick leave so computed contains a fraction of a day, such total amount shall be rounded to the next highest full day. The maximum number of days of sick leave so credited to any such officer or member under this section shall be one hundred and forty-five days. (Aug. 21, 1964, 78 Stat. 582, Pub. L. 88–471, § 2.)

Reference In Text

See note to section 4–905.

Effective Date

Sec. 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–907. Initial sick leave balance applicable to Firefighting Division of Fire Department—Computation of—Maximum number of days.

Each officer or member of the Firefighting Division of the Fire Department of the District of Columbia so employed on the effective date of this Act shall be credited with an initial sick leave balance which shall be computed as follows: The total lentgh of service in terms of years, months, and days shall be determined and for each full year of such service, such officer or member shall be credited with four days of sick leave; any period of such service amounting to less than one full year shall be divided into biweekly pay periods and for each full biweekly pay period, such officer or member shall be credited with sick leave in the amount of four twenty-sixths of a day, but no credit shall be given for any remaining portion of such service amounting to less than one full biweekly pay period. In any case in which the total amount of such sick leave so computed contains a fraction of a day, such total amount shall be rounded to the next highest full day. The maximum number of days of sick leave so credited to any such officer or member under this section shall be one hundred and sixteen days. (Aug. 21, 1964, 78 Stat. 582, Pub. L. 88–471, § 3.)

Reference In Text

See note to section 4–905.

Effective Date

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a; repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–908. "Service" defined for purpose of computing the initial sick leave balance.

For the purpose of computing the initial sick leave balance as authorized in sections 4–906 and 4–907, the term "service" as used in such sections shall include (1) periods of employment as an officer or member of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police force, and the White House Police force, and (2) all other periods of employment under the Government of the United States or under the government of the District of Columbia (including any corporations wholly owned or controlled by the United States), but in no case shall any such periods of employment for which sick leave accrual benefits were not provided or periods of military service be included in the computation of such initial sick leave balance. (Aug. 21, 1964, 78 Stat. 582, Pub. L. 88–471, § 4.)

Effective Date

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 5 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c),

5 U.S.C. 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–909. Injury or illness resulting from the performance of duty—Sick leave not to be charged—Rules and Regulations.

(a) No sick leave shall be charged to the account of any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia or the United States Park Police force or the White House Police force for periods of absence due to injury or illness resulting from the performance of duty.

(b) The determination of whether an injury or disease resulted from the performance of duty shall be made pursuant to regulations promulgated by the Commissioners of the District of Columbia for officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, by the Secretary of the Treasury for the White House Police force and by the Secretary of the Interior for the United States Park Police force. (Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 5.)

EFFECTIVE DATE

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing sec. 8 U.S.C. 2061(b)(3), amending secs. 5 U.S.C. 2063(a)(c), 6 U.S.C. 2064(e) striking out the provisions of sec 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap. Sec.
9. Horizontal Property Regimes..... 5-901

Chapter 1.—ALLEY DWELLINGS

§ 5-105a. Disposition of receipts from sales, leases, etc.

All receipts derived from sales, leases, or other sources shall be covered into the Treasury of the United States monthly. (Aug. 17, 1961, 75 Stat. 355, Pub. L. 87-141, title I, § 101.)

SIMILAR PROVISIONS

1964—Aug. 30, 1964, 78 Stat. 658, Pub. L. 88-507, § 101.
1963—Dec. 19, 1963, 77 Stat. 440, Pub. L. 88-215, § 101.
1962—Oct. 3, 1962, 76 Stat. 731, Pub. L. 87-741, § 101.

Section is from the Independent Offices Appropriation Act 1962, act Aug. 17, 1961. Similar provisions were contained in the following appropriation act.

1961—July 12, 1960, 74 Stat. 436, Pub. L. 86-626, title I, § 101. For earlier similar provisions see main volume of Code.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

§ 5-317. Means of egress and fire safety appliances required in certain public buildings.

NOTES TO DECISIONS

Constitutionality .51
Facts as basis for regulation .52
Notice, publication of .53
Purpose of law .54
Regulations, validity of 2

.51. Constitutionality

Fire prevention provisions of the District of Columbia Building Code were not unconstitutional on theory of vagueness even though drawn in technical language which could not be understood by laymen, where such language was understandable by persons with knowledge in the field. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

Provisions of District of Columbia Building Code, like municipal ordinances, were protected by a presumption of constitutionality, and they could not be declared unconstitutional unless clearly arbitrary. *Id.*

Provisions of District of Columbia Building Code relative to fire safety were not unconstitutional merely because they granted discretion to an administrative officer to grant variances in limited cases. *Id.*

.52. Facts as basis for regulation

Facts developed at public hearings held before promulgation of fire regulations under the District of Columbia Building Code did not necessarily have to support each and every provision of the regulations which resulted therefrom. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

.53. Notice, publication of

Although act authorizing commissioners of the District of Columbia to promulgate regulations required a public hearing prior to promulgation of regulations, personal notice to property owners of public hearing was not necessary, and notice requirement was met by publication of notice of hearings in three newspapers of general circulation and by mailing of notice to 300 organizations which had requested notification. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

.54. Purpose of law

Purpose of the Means of Egress Act was to protect the public, particularly that portion of the public living in or frequenting buildings covered by the act. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

2. Regulations, validity of

Fire regulations promulgated by Commissioners of District of Columbia requiring the correction of deficiencies in existing rooming houses were not so burdensome as to make compliance unreasonably onerous or constitute a confiscation of property, especially where provision was made for an owner to apply to Board of Appeals and Review for the grant of a variance if compliance was deemed by owner to be unduly burdensome. *R. L. Jones et al., The Ellen Real Estate Corp. et al.* v. *The District of Columbia* (1963, 212 F. Supp. 438).

Fire regulations promulgated by Commissioners of District of Columbia were not invalid as unenforceable for uncertainty and ambiguity where technical language was intrinsically necessary in order to carry out legislative purpose and where language used was reasonably understandable to one having knowledge in the field. *Id.*

Fire regulations promulgated by Commissioners of District of Columbia were not invalid on ground that appropriate public hearing had not been held where notice had been given and hearing had been held similar in character and purpose to hearings held by congressional committees, even though findings could not be made from the transcript to support each regulation adopted following the hearing. *Id.*

§ 5-318. Same—Occupancy prohibited after notice of noncompliance.

NOTES TO DECISIONS

.50. Certificate of occupancy

Temporary certificates of occupancy issued to landlords did not relieve them from obtaining new certificates of occupancy under subsequently promulgated District of Columbia Building Code. *R. L. Jones et al.* v. *District of Columbia; the Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

Sec.
5-418. Maximum height of buildings—Restrictions on location and use of chanceries and embassies—Definitions.
5-418a. Continued use and maintenance of existing chanceries—Construction, reconstruction, expansion or alterations in accordance with permits issued on or before February 18, 1964.
5-418b Applicability of subsections 5-418 (b) to (e).
5-418c. Transfer or use of chanceries contrary to provisions of section 5-418 (a) to (e)—Exception.
5-418d. Administration of sections 5-418 to 5-418c—Discrimination against foreign governments prohibited.

§ 5-405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fireproof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

* * * * *

On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over ninety feet in height at the highest

part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue, or highway sixty feet wide or less, where a height equal to the width of the street may be allowed: *Provided,* That any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this paragraph, and the Commissioners of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of ninety-five feet above the level of the adjacent curb.

* * * * *

(As amended Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–281, § 1.)

AMENDMENT

Act Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–281, § 1, amended the third paragraph of the section by striking out the words, "over eight stories in height or".

§ 5–410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

NOTES TO DECISIONS

1. Authority of Fine Arts Commission

Northeast corner of intersection of Thirteenth and E Streets NW., in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. *Stanley Company of America et al.* v. *W. N. Tobriner et al., Commissioners, etc.* (1961, 298 F. 2d 318, 111 U.S. App. D.C. 404).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. *Id.*

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Id.*

§ 5–411. Plats of restricted area to be prepared.

NOTES TO DECISIONS

Adjacent 1
Authority of Fine Arts Commission 2

1. Adjacent

Under statute giving Commission of Fine Arts duty of approving alteration of buildings adjacent to public buildings of major importance and when part of property fronts or abuts on portion of Pennsylvania Avenue extending from Capitol to White House, property located on Thirteenth Street Northwest was "adjacent" and did "front" on Pennsylvania Avenue within contemplation of statute. *Stanley Company of America Inc., et al.* v. *R. E. McLaughlin et al.* (1961, 195 F. Supp. 519).

2. Authority of Fine Arts Commission

Northeast corner of intersection of Thirteenth and E Streets NW., in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. *Stanley Company of America et al.* v. *W. N. Tobriner et al., Commissioners, etc.* (1961, 298 F. 2d 318, 111 U.S. App. D.C. 404).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. *Id.*

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Id.*

§ 5–413. Zoning regulations to be made by Zoning Commission—Uniformity.

NOTES TO DECISIONS

Abuse of discretion 1
Exception 7
Reasons for decision 9.50
Review by court 10
Review of decision of board of zoning adjustment 12

1. Abuse of discretion

Evidence of greater income from plaintiff's property if his property were rezoned as he wished, even if such evidence were not too speculative to support a finding, did not establish abuse of zoning commission's action in declining to rezone as requested. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

7. Exception

Whether exception should be granted for particular piece of property is within jurisdiction of board of zoning adjustment, subject to certain limitations. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

9.50. Reasons for decision

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. *Robey et al., and Woodley Hill Area Home Owners Assn. et al.* v. *Schwab, Jr., et al., and Scrivener et al., As Members of Board, etc.* (1962, 307 F. 2d 198, 113 U.S. App. D.C. 241).

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although finding need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. *Id.*

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. *Id.*

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. *Id.*

10. Review by court

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside action of commission merely because court might have decided other way had court been member of commission. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C–2 to C–3–B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. *Id.*

12. Review of decision of board of zoning adjustment

Ordinarily, review by court of decision of Board of Zoning Adjustment of District of Columbia would be limited to Board's record of proceedings before it, and court would not be permitted to hear evidence dehors that record. *W. S. Jarrott, et al.* v. *S. Schivener Jr., et al., Members of Board of Zoning Adjustments et ano.* (1964, 225 F. Supp. 827).

Where integrity of decision of Board of Zoning Adjustment of District of Columbia was questioned, court could go outside Board's record and receive independent evidence. *Id.*

Generally, correctness or incorrectness of decision of Board of Zoning Adjustment of District of Columbia is not one for judicial review if there is substantial evidence to support it and parties have been accorded due process of law. *Id.*

§ 5–414. Purpose of zoning regulations.

NOTES TO DECISIONS

Comprehensive plan .50
Purpose 5

.50. Comprehensive plan

Adoption of comprehensive plan and promulgation of regulations, accompanied by city-wide map, may all be single act, providing entire city is zoned on comprehensive basis. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

5. Purpose

Purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

§ 5–415. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

NOTES TO DECISIONS

Purpose of hearings 1
Notice of hearing 2

1. Purpose of hearings

A purpose of zoning hearings is to explore subject such as limitations with respect to floor area ratio or limitation of lot occupancy in connection with proposed changes in zoning regulations. *S. J. Aquino* v. *Tobriner et al., Commissioners etc.* (1961, 298 F. 2d 674, 112 U.S. App. D.C. 13).

That substantial changes were made in zoning proposals originally put forward did not invalidate changes in regulations rezoning as "R–4", wherein only certain types of residential construction were permitted, lots formerly zoned "first commercial", where rezoning was purpose of hearing, even though original proposals did not require limitation on floor area ratio or lot occupancy and rezoning as adopted did. *Id.*

2. Notice of hearing

Statutory requirement that District of Columbia Commissioners give such notice, in addition to notice published in newspaper, of zoning hearing as Commission deems feasible and practical is not mandatory, but whether and what kind of added notice will be given in particular case is in discretion of Commission. *S. J. Aquino* v. *Tobriner et al., Commissioners etc.* (1961, 298 F. 2d 674, 112 U.S. App. D.C. 13).

Zoning Commission's failure to give additional notice beyond newspaper publication of notice of hearing on zoning regulation changes was not abuse of discretion in absence of showing that giving of additional notice was feasible and practical, particularly in view of fact that hearing was attended by considerable publicity. *Id.*

§ 5–418. Maximum height of buildings—Restrictions on location and use of chanceries and embassies—Definitions.

(a) The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by sections 5–401 to 5–409, regulating the height of buildings in the District of Columbia.

(b) After October 13, 1964, a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building anywhere in the District of Columbia, other than a district or zone restricted in accordance with this Act to use for industrial purposes, for use by such government as an embassy.

(c) After October 13, 1964, except as otherwise provided in subsection (d) of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, regardless of the date such land was acquired, within any district or zone restricted in accordance with this Act to use for residential purposes.

(d) After October 13, 1964, a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery within any district or zone restricted in accordance with this Act to use for medium-high density apartments or high density apartments if the Board of Zoning Adjustment shall determine after a public hearing that the proposed use and the building in which the use is to be conducted are compatible with the present and proposed development of the neighborhood. In determining compatibility the Board of Zoning Adjustment must find that—

(1) in districts or zones restricted in accordance with this Act to use for medium-high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred square feet of gross floor area; and

(2) in districts or zones restricted in accordance with this Act to use for high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred square feet of gross floor area; and

(3) the height of the building does not exceed the maximum permitted in the district or zone in which it is located; and

(4) the architectural design and the arrangement of all structures and off-street parking spaces are in keeping with the character of the neighborhood.

(e) As used in this section, the term—

(1) 'embassy' means a building used as the official residence of the chief of a diplomatic mission of a foreign government.

(2) "chancery means a building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted, and such term shall include any chancery annex, and the business offices of attachés of a foreign government who are under the personal direction and superintendence of the chief of mission of such government. Such term shall not include business offices of nondiplomatic missions of foreign governments such as purchasing, financial, educational, or other missions of comparable nondiplomatic nature.

(3) "person" means any individual who is subject to direction by the chief of mission of a foreign government and is engaged in diplomatic activities recognized as such by the Secretary of State.

(June 20, 1938, 52 Stat. 798, ch. 534, § 6; Oct. 13, 1964, 78 Stat. 1091, Pub. L. 88–659, § 1.)

REFERENCE IN TEXT

"This Act" referred to in text in the act of June 20, 1938, set out as sections 5–413 to 5–428, as amended.

AMENDMENT

1964—Section 1 of act Oct. 13, 1964, amended the section by inserting (a) at the beginning of the section and by adding subsections (b) to (e) thereto.

§ 5–418a. Continued use and maintenance of existing chanceries—Construction, reconstruction, expansion or alterations in accordance with permits issued on or before February 18, 1964.

Nothing in the amendments made by section 5–418 shall prohibit—

(1) the future or continued use of a building as a chancery or the making of ordinary repairs to any such building for which lawful use as a chancery existed on October 13, 1964, or

(2) the construction, reconstruction, expansion, or alteration in accordance with any permit issued by the Board of Commissioners of the District of Columbia on or before February 18, 1964, of any building used or to be used as a chancery.

(Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 2.)

§ 5–418b. Applicability of subsections 5–418 (b) to (e).

The amendments made by section 5–418 shall apply only to applications for special exemptions to the zoning regulations filed with the Board of Zoning Adjustment after May 1, 1964. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 3.)

§ 5–418c. Transfer or use of chanceries contrary to provisions of section 5–418 (a) to (e)—Exception.

After October 13, 1964, no building or chancery being used by a foreign government in the District of Columbia shall be transferred to or used by another foreign government unless such use is in accordance with section 5–418, as amended, or unless such use was in accordance with applicable law at the time of this enactment. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 4.)

§ 5–418d. Administration of sections 5–418 to 5–418c—Discrimination against foreign governments prohibited.

Sections 5–418 to 5–418d shall not be administered in such a way as to discriminate against any foreign government on the basis of the race, color, or creed of any of its citizens. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 5.)

§ 5–419. Use of existing buildings—Restrictions—Discretion of Zoning Commission—Extension of use.

NOTES TO DECISIONS

Enlargement of non-conforming use 4.50
Procedures before board 7

4.50. Enlargement of non-conforming use

Where area to be occupied by restaurants' altered structure was enclosed on two sides by roofless structure consisting of high basket-weave type wooden fence and structure for which building permit was sought would completely enclose existing structure with four sides and roof and proposed alteration would not increase business of restaurant which operated drive-in service that was a non-conforming use proposed new structure did not constitute an enlargement barred by Code prohibiting enlargement of nonconforming use. *Hot Shoppes, Inc.*, v. *Robert O. Clouser et al., Members of District of Columbia Board of Zoning Adjustment* (1964, 231 F. Supp. 825).

Proposed change of fenced-in structure to structure completely enclosed by four sides and roof constituted structural alteration within Zoning Act providing that nonconforming use may continue provided no structural alteration except such as may be required by law or regulation is erected. *Id.*

That Board of Zoning Adjustment stated that it made an inspection of property and that equipment required by Health Department to be enclosed could have been placed somewhere inside existing structure so that construction of building to enclosed equipment was not necessary, did not raise presumption that Board had facts to support its conclusion, where Board did not set forth facts upon which it relied on reaching conclusion that structure for which building permit was sought was not required. *Id.*

Purpose of zoning regulation giving applicant for building permit chance to make rebuttal after administrative officer and any interested property owners or other interested persons have stated their side of case is to give applicant opportunity to rebut findings including those made as result of inspection of applicant's property. *Id.*

7. Procedures before board

Inspection of property, for which building permit was sought, by Zoning Board of Adjustment would constitute a "step taken" or "act done" within zoning regulation requiring Secretary of Board of Zoning Appeals to enter in docket all continuances, postponements and other steps taken or acts done by Board or officers on behalf Board. *Hot Shoppes, Inc.*, v. *Robert O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (1964, 231 F. Supp. 825).

Failure to permit applicant for building permit to question and rebut any evidence gathered at any inspection of his property by Board of Zoning Adjustment and to make inspection itself a matter of record was a denial of due process to applicant. *Id.*

§ 5–420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

NOTES TO DECISIONS

Abuse of discretion 1
Arbitrary or capricious 2
Functions of board 7
Hardship 7.50
Reasons for decision 9.50
Review by court 10
Review of decisions of board of zoning adjustment 12
Review of unfair hearing 12.50
Statutory right 13.50

1. Abuse of discretion

Evidence of greater income from plaintiff's property if his property were rezoned as he wished, even if such evidence were not too speculative to support a finding, did not establish abuse of zoning commission's action in declining to rezone as requested. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

2. Arbitrary or capricious

Board of zoning adjustment opinion that relief from zoning ordinance to permit use of house as professional office could not be granted without substantial detriment to public good and without substantially impairing intent, purpose, and integrity of zoning plan relating to neighborhood which largely conformed with its residential zoning was reasonable, and court erred in substituting its own contrary opinion. *R. O. Clouser et al., as Members of Board of Zoning etc.* v. *King David* (1962, 309 F. 2d 233, 114 U.S. App. D.C. 12).

7. Function of board

In performance of adjudicatory function by Board of Zoning Adjustment of District of Columbia, parties whose

rights are involved are entitled to same fairness, impartiality and independence of judgment as are expected in court of law. *W. S. Jarrott, et al.* v. *S. Scrivener Jr., et al., Members of Board of Zoning Adjustments et ano.* (1964, 225 F. Supp. 827).

7.50. Hardship

If there were not room inside restaurant to store commissary carts, restaurant owner which was directed by Health Department to store its commissary carts under cover would be entitled to building permit to construct structure to store carts, but, if there were room, application for building permit could be considered as request for variance requiring board to determine whether applicant had established hardship which would support issuance of variance. *Hot Shoppes, Inc.*, v. *R. O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (1964, 231 F. Supp. 825).

Hardship not resulting from location, situation, or condition of property, but solely from owner's appropriation of it for commercial purposes without first having obtained necessary zoning change was not such "hardship" as to justify variance. *R. O. Clouser et al., as Member of Board of Zoning etc.* v. *King David* (1962, 309 F. 2d 233, 114 U.S. App. D.C. 12).

9.50. Reasons for decision

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. *Robey et al. and Woodley Hill Area Home Owners Ass'n. et al.* v. *Schwab, Jr., et al., and Scrivener et al., as Members of Board etc.* (1962, 307 F. 2d 198, 113 U.S. App. D.C. 241).

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. *Id.*

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although findings need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. *Id.*

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. *Id.*

10. Review by court

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside action of commission merely because court might have decided other way had court been member of commission. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (1964, 229 F. Supp. 255).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C–2 to C–3–B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. *Id.*

12. Review of decision of board of zoning adjustment

Generally, remand to Board of Zoning Appeal for further proceedings is appropriate, but where abuse of discretion is manifest and it is clear that applicant has carried its burden of proof, then remand to Board with instructions to grant applicant's request is proper. *Hot Shoppes, Inc.*, v. *Robert O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (1964, 231 F. Supp. 825).

Order of Zoning Board of Adjustment denying building permit would be vacated and case remanded to Board for further proceedings, where Board and, at least initially, applicant proceeded as if applicant were seeking only variance and applicant should have invoked not hardship but clear statutory right to erect proposed structure under Code. *Id.*

Greater discretion is vested in Board of Zoning Adjustment in granting or denying variance than there is in determining whether error had been committeed by any official such as inspector of buildings, particularly where alleged error was of statutory interpretation. *Id.*

12.50. Review of unfair hearing

That three Board of Zoning Adjustment members of District of Columbia, two of whom were subordinate government employees, were secretly informed that highly placed persons in government wanted Board to grant foreign government's application for exception to erect embassy building in residential zone denied fair hearing, rendered favorable decision void and required rehearing by new board created for that purpose. *W. S. Jarrott, et al.*, v. *S. Scrivener Jr., et al., Members of Board of Zoning Adjustment et ano.* (1964, 225 F. Supp. 827).

13.50. Statutory right

Owner seeking building permit to erect utility building adjacent to restaurant as required by Health Department should not have invoked hardship but clear statutory right to erect proposed structure and owner should have invoked statutory right to appeal from refusal of building inspector to issue building permit. *Hot Shoppes, Inc.* v. *Robert O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (1964, 231 F. Supp. 825).

Restaurant had statutory right to continue utilizing same floor and land area utilized at time use became nonconforming. *Id.*

Any complaints on part of neighbors to noise or other disturbances were wholly immaterial to initial issue before Board on application for permit filed by restaurant to build structure on ground that it was required by Health Department. *Id.*

Chapter 5.—UNSAFE STRUCTURES

Sec.

5–501. Structure reported unsafe, to be examined by commissioners—If unsafe, notice to be given to make same secure—If safety requires, commissioners may make secure.
5–502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.
5–503. Commissioners to make structure safe if responsible person does not—Owners or other interested persons not to interfere with commissioners.
5–504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.
5–505. Costs and expenses of removing nuisances to be determined by commissioners and assessed against the property—Penalty for violation of Sections 5–501 to 5–503.
5–506. Payment and collection of costs and expenses—Interest—Sale of property for nonpayment after two years.
5–507. Notice—How served—Publication of when permissible.
5–508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of commissioners order.

§ 5–501. Structure reported unsafe, to be examined by Commissioners—If unsafe, notice to be given to make same secure—If safety requires, Commissioners may make secure.

If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the Commissioners shall examine such structure or excavation, and if, in their opinion, the same be unsafe, they shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same

to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the Commissioners may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby.

The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board or the agent or agents designated by them to perform any function vested in said Commissioners by this chapter. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 1; Apr. 5, 1935, 49 Stat. 105, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, § 1, 2.)

AMENDMENTS

1964—Section 1 of act Aug. 22, 1964, amended the section as follows: Substituted "Commissioners" for "inspector of buildings"; changed "his opinion" to "their opinion" and changed "he shall" to "they shall."

Section 2 of the same act added the last sentence.

NOTES TO DECISIONS

Party wall 2
Priority of lien for cost of razing 3
Reimbursement for razing unsafe building 4

2. Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. *District of Columbia and First Baptist Church of the City of Washington, D.C.* v. *J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

3. Priority of lien for cost of razing

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

4. Reimbursement for razing unsafe building

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

§ 5–502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

When the public safety does not, in the judgment of the Commissioners, demand immediate action, if the owner, agent, or other party interested in said unsafe structure or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by three disinterested persons, one to be appointed by the commissioners of the District of Columbia, one by the owner or other person interested, and the third to be chosen by these two, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuse or neglect to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the Commissioners and the person chosen by the commissioners, and in case of disagreement they shall choose a third person and the determination of a majority of the three so chosen shall be final. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 2; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, § 1.)

AMENDMENTS

1964—Section 1 of act Aug. 22, 1964, amended the section by substituting "commission" for "inspector of buildings" in two places.

NOTES TO DECISIONS

1. Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C.,* v. *J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

§ 5–503. Commissioners to make structure safe if responsible person does not—Owners or other interested persons not to interfere with Commissioners.

Whenever the report of any such survey shall declare the structure or excavation to be unsafe, or shall state that structural repairs should be made in order to place the said structure or excavation in a fit condition for further occupancy or use, and the owner or other interested person shall for ten days neglect or refuse to cause such structure or excavation to be taken down or otherwise to be made safe, the Commissioners shall proceed to make such structure or excavation safe or remove the same. After the expiration of the ten days in which the owner or other interested person is given to make the structure or excavation safe, or to be taken down or removed, the owner or other interested person, having failed to comply with the provision of the report of the board of survey, shall not enter, or cause to be entered, the premises for the purpose of making the repairs ordered, or razing the building, as the case may be; or in any other way to interfere with the authorized agents of the District of Columbia in making the said structure or excavation safe, or in removing same, without first having obtained the written consent of the commissioners of the District of Columbia or their duly authorized representatives. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 3; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, §§ 1, 3.)

AMENDMENTS

1964—Section 1 of act Aug. 22, 1964, substituted "Commissioners" for "inspector of buildings" in the first sentence.

Section 3 of the same act, struck out the last sentence. For provisions of last sentence see main volume of the code.

NOTES TO DECISIONS

Party wall 1
Priority of lien for cost of razing 2
Reimbursement for razing unsafe building 3

1. Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C.* v. *J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

2. Priority of lien for cost of razing

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

3. Reimbursement for razing unsafe building

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

§ 5–504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.

(a) The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, any dead, dangerous or diseased tree, or part thereof, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety, and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company, owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the Commissioners of the District of Columbia, after five days' notice from them to do so, shall, on conviction in The District of Columbia Court of General Sessions be punished by a fine of not exceeding $50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia, on which there exists an open well, cistern, dangerous hole, or excavation, or any dead, dangerous, or diseased tree or part thereof, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within one week after the expiration of such notice, the said commissioners may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, or parts thereof, any miscellaneous accumulation of material or debris or any dead or dangerous tree or part thereof, or the removal or spraying of any diseased tree adversely affecting the public safety, health, comfort, and welfare, and the cost and expense thereof shall be assessed by said commissioners as a tax against the property on which such nuisance exists, and the tax so assessed shall be collected in the manner provided in section 5–506. Within the meaning of this section, a dead tree shall be any tree with respect to which the Commissioners of the District of Columbia or their designated agent have determined that no part thereof is living; a dangerous tree is any tree or part thereof, living or dead, which the said Commissioners or their designated agent shall find is in such condition and is so located as to constitute a danger to persons or property on public space in the vicinity of such tree; and a diseased tree shall be any tree on private property in such a condition of infection from a major pathogenic disease as to constitute, in the opinion of the said Commissioners or their designated agent, a threat to the health of any other tree.

(b) The authority conferred on the Commissioners under subsection (a) with respect to the removal of dangerous and diseased trees constituting a nuisance shall be exercised by the Commissioners only after every reasonable effort has been made to abate such nuisance other than by the removal of any such tree, or part thereof. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 4; Apr. 5, 1935, 49 Stat. 107, ch. 41; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, § 4.)

AMENDMENTS

1964—Section 4 of act Aug. 22, 1964, amended the section as follows: Inserted "(a)" in front of the first word; Inserted in the first sentence after the word excavation "any dead, dangerous, or diseased tree, or part thereof,"; Struck out "excavation" in the second sentence and inserted "excavation or any dead, dangerous or diseased tree or part thereof,"; Struck out "parts thereof or miscellaneous accumulation of material or debris" and inserted in lieu "or parts thereof, any miscellaneous accumulation of material or debris, or any dead or dangerous tree, or part thereof, or the removal or spraying of any diseased tree"; Struck out the phrase beginning with "bear interest" and ending with "general taxes" and inserting at that point the words "be collected in the manner provided in section 5–506."; Added the last sentence in subsection (a) starting with the words "Within the meaning" and added subsection (b).

CHANGE OF NAME

The District of Columbia Court of General Sessions was inserted by the compilers in place of the Municipal Court, since the name of the court has been changed. See section 11–101 and Revision Notes thereunder.

§ 5–505. Costs and expenses of removing nuisances to be determined by Commissioners and assessed against the property—Penalty for violation of sections 5–501 to 5–503.

The Commissioners shall determine the cost and expense of any work performed by them under the authority of sections 5–501 to 5–504, including the cost of making good damaged to adjoining premises (except such as may have resulted from carelessness and willful recklessness in the demolition or removal of any structure) less the amount, if any, received from the sale of old material, and shall assess such cost and expense upon the lot or ground whereon such structure, excavation, or nuisance stands, stood, was dug, was located, or existed, and this

amount shall be collected in the manner provided in section 5–506. Any person, corporation, partnership, syndicate, or company subject to the provisions of sections 5–501 to 5–503 who shall neglect or refuse to perform any act required by such sections shall be punished by a fine not exceeding $50 for each and every day said person, corporation, partnership, syndicate, or company fails to perform any act required by such sections. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5, as added Aug. 22, 1964, 78 Stat. 600, Pub. L. 88–486, § 5.)

§ 5–506. Payment and collection of costs and expenses—Interest—Sale of property for nonpayment after two years.

Any tax authorized to be levied and collected under this chapter may be paid without interest within sixty days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 6, as added Aug. 22, 1964, 78 Stat. 600, Pub. L. 88–486, § 5.)

§ 5–507. Notice—How served—Publication of when permissible.

(a) Any notice required by this chapter to be served shall be deemed to have been served when served by any of the following methods: (1) When forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia, by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided,* That valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; or (2) when delivered to the person to be notified; or (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or (4) if no such residence or place of business can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or (5) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on three consecutive days in a daily newspaper published in the District of Columbia; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service. a copy of such notice shall also be sent to the owner by ordinary mail. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5, as added Apr. 5, 1935, 49 Stat. 107, ch. 41; renumbered as § 7 and amended Aug. 22, 1964, 78 Stat. 600, Pub. L. 88–486, § 6.)

AMENDMENT

Section 6 of act Aug. 22, 1964, renumbered section 5 to section 7 and amended it to read as above set out. For comparison of section prior to this amendment see former section 5–505 in the main volume of the Code.

§ 5–508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of Commissioners order.

Whenever the Commissioners find that any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation shall cause a building to be unsafe for human occupancy, they shall give notice of such fact to the owner or other person having an interest in such building, and to the occupant or occupants thereof. If within five days after such notice has been served upon such owner or other interested person, such building or part thereof has not been made safe for human occupany, the Commissioners may order the use of such building or part thereof discontinued until it has been made safe: *Provided,* That if in the opinion of the Commissioners the unsafe condition of the building or part thereof is such as to be imminently dangerous to the life or limb of any occupant, the Commissioners may order the immediate discontinuance of the use of such building or part thereof. Any person occupying, or permitting the occupancy of, such building or part thereof in violation of such order of the Commissioners shall be fined not more than $300 or imprisoned for not more than thirty days. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 8, as added Aug. 22, 1964, 78 Stat. 486, Pub. L. 88–486, § 7.)

RENUMBERING OF SECTION 6 OF ACT MAR. 1, 1899

Section 8 of act Aug. 22, 1964, renumbered section 6 of act Mar. 1, 1899, as added by act Apr. 5, 1935, 49 Stat. 107, ch. 47, to section 9. The section as so renumbered provides: "That all Acts and parts of Acts inconsistent with this Act, be and the same are hereby repealed."

Chapter 7.—HOUSING REDEVELOPMENT

Sec.

5–728. Commissioners of the District of Columbia authorized to provide relocation services to displaced persons and concerns as a result of actions by the United States or District governments—Displaced persons to be given preference in vacancies occurring in government houses within the district—Housing surveys authorized.
5–729. Same; relocation payments for reasonable and necessary moving expenses and actual direct losses of property resulting from displacement from property acquired by Commissioners for public works projects—Exception—Regulations—Limit on payments.
5–730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.
5–731. District of Columbia Relocation Assistance Office—Establishment—Functions.
5–732. Commissioners authorized to make regulations.

§ 5–701. General purposes.

NOTES TO DECISIONS

3. Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 5–704. Power to acquire and assemble real property.

NOTES TO DECISIONS

7.50. Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 5–715. Appropriations authorized.

NOTES TO DECISIONS

1. Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 5–728. Commissioners of the District of Columbia authorized to provide relocation services to displaced persons and concerns as a result of actions by the United States or District Governments—Displaced persons to be given preference in vacancies occurring in Government houses within the District—Housing surveys authorized.

The Commissioners of the District of Columbia are hereby authorized to provide such relocation services as they shall determine to be reasonable and necessary to individuals, families, business concerns, and nonprofit organizations which may be or have been displaced from real property by actions of the United States or of the government of the District of Columbia, except the District of Columbia Redevelopment Land Agency, such actions to include, but not be limited to, acquisition of property for public works projects, condemnation of unsafe and insanitary buildings, and enforcement of the laws and regulations relating to housing. The Commissioners shall provide that such individuals and families so displaced shall be given the same preference with respect to vacancies occurring in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies as is provided in section 5–707(b). The Commissioners are authorized to make housing surveys in order to carry out sections 5–728 to 5–732. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 1.)

EFFECTIVE DATE

Section 6 of act Oct. 6, 1964, provided: "This Act [sections 5–728 to 5–732] shall take effect sixty days after the date of its approval". [Oct. 6, 1964.]

§ 5–729. Same; relocation payments for reasonable and necessary moving expenses and actual direct losses of property resulting from displacement from property acquired by Commissioners for public works projects—Exception—Regulations—Limit on payments.

The Commissioners are hereby authorized to make relocation payments to individuals, families, business concerns, and nonprofit organizations for their reasonable and necesary moving expenses and any actual direct losses of property except goodwill or profit caused by their displacement from real property acquired by the Commissioners after the effectice date of sections 5–728 to 5–732 for public works projects of the government of the District of Columbia, except the District of Columbia Redevelopment Land Agency. No such payment shall be made in any case here a payment for a similar purpose is authorized by any other Act. Such relocation payments shall be made in accordance with regulations prescribed by the Commissioners and shall not for any one relocation exceed $200 in the case of an individual or family or $3,000 (or, if greater, the total certified actual moving expense not to exceed $25,000) in the case of a business concern or nonprofit organization. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 2.)

EFFECTIVE DATE

See note to section 5–728.

§ 5–730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.

Prior to the acquisition of real property for any public works project of the government of the District of Columbia the Commissioners shall make the same determinations with respect to the availability of housing for displaced individuals and families as is required by section 5–707(a). (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 3.)

EFFECTIVE DATE

See note the section 5–728.

§ 5–731. District of Columbia Relocation Assistance Office—Establishment—Functions.

There is hereby established within the District of Columbia Redevelopment Land Agency an office to be known as the District of Columbia Relocation Assistance Office (hereinafter referred to as the "Office"). The Office shall provide the reloaction serv-

ices authorized by section 5–728, administer the payments authorized by section 5–729 and provide the relocation assistance which the District of Columbia Redevelopment Land Agency is authorized to provide by 5–701 to 5–719 and any other Act. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 4.)

Effective Date

See note the section 5–728

§ 5–732. Commissioners authorized to make regulations.

The Commissioners are hereby authorized to make regulations to carry out the purposes of sections 5–728 to 5–732. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 5.)

Effective Date

See note to section 5–728.

Chapter 9.—HORIZONTAL PROPERTY REGIMES

Sec.

5–901. Short title.
5–902. Definitions.
5–903. Horizontal property regimes.
5–904. Status of condominium units within a horizontal property regime.
5–905. Joint tenancies, tenancies in common, tenancies by the entirety.
5–906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.
5–907. Indivisibility of common elements—Limitation upon partition.
5–908. Use of elements held in common, right to repair common elements.
5–909. Condominium subdivision.
5–910. Reference to plat.
5–911. Termination and waiver of regime.
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5–919. Supplementary method of enforcement of lien.
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5–922. Sharing of reconstruction cost where building is not insured or insurance indemnity is insufficient.
5–923. Separate taxation.
5–924. Actions—Right to separate release of judgment.
5–925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.
5–926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.
9–927. Supplement of existing code provisions.
5–928. Regulations of the Board of Commissioners and the zoning commission.
5–929. Interpretation.
5–930. Supplemental provisions relating to sewer and water services.
5–931. Authority of Board of Commissioners under Reorganization Plan Numbered 5 of 1952.
5–932. Severability.
5–933. Effective date.

§ 5–901. Short title—Citation of chapter.

That this chapter, including the following table of contents, may be cited as the "Horizontal Property Act of the District of Columbia". (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88–218, § 1.)

Reference in Text

The "following table of contents" refers to the section analysis set out above this section.

Effective Date

See section 5–933.

§ 5–902. Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein—

(a) "Unit" or "condominium unit" means an enclosed space, consisting of one or more rooms, occupying all or part of one or more floors in buildings of one or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, and shall include such accessory units as may be appended thereto, such as garage space, storage space, balcony, terrace or patio: *Provided,* that said unit has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

(b) "Condominium" means the ownership of single units in a multiunit structure with common elements.

(c) "Condominium project" means a real estate condominium project; a plan or project whereby five or more apartments, rooms, office spaces, or other units in existing or proposed buildings or structures are offered or proposed to be offered for sale.

(d) "Co-owner" means a person, persons, corporation, trust, or other legal entity, or any combination thereof, that owns a condominium unit within the building.

(e) "Council of co-owners" means the co-owners as defined in subsection (d) of this section, acting as a group in accordance with the provisions of this chapter and the bylaws and declaration established thereunder; and a majority, as defined in subsection (h) of this section, shall, except as otherwise provided in this chapter, constitute a quorum for the adoption of decisions.

(f) "General common elements" except as otherwise provided in the plat of condominium subdivision, means and includes—

(1) the land on which the building stands in fee simple or leased provided that the leasehold interest of each unit is separable from the leasehold interests of the other units;

(2) the foundations, main walls, roofs, halls, columns, girders, beams, supports, corridors, fire escapes, lobbies, stairways, and entrance and exit or communication ways;

(3) the basements, flat roofs, yards, and gardens except as otherwise provided or stipulated;

(4) the premises for lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(5) the compartments or installations of central services such as power, light, gas, cold and hot water, heating, central air conditioning or central refrigeration, swimming pools, reservoirs, water tanks and pumps, and the like;

(6) the elevators, garbage and trash incinerators and, in general, all devices or installations existing for common use; and

(7) all other elements of the building rationally of common use or necessary to its existence, upkeep, and safety.

(g) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of condominium units, such as special corridors, stairways, and elevators, sanitary services common to the apartments of a particular floor, and the like.

(h) "Majority of co-owners", "two-thirds of the co-owners", and "three-fourths of the co-owners" mean, respectively, 51, 66⅔, and 75 per centum or more of the votes of the co-owners computed in accordance with their percentage interests as established under section 6 of this chapter.

(i) "Plat of condominium subdivision" means the plat of the surveyor of the District of Columbia establishing the condominium units, accessory units, general common elements, and limited common elements.

(j) "Person" means a natural individual, corporation, trustee, or other legal entity or any combination thereof.

(k) "Developer" means a person that undertakes to develop a real estate condominium project.

(l) "Property" means and includes the lands whether leasehold, if separable as defined in (f)(1) of this section, or in fee simple, the building, all improvements and structures thereon, and all easements, rights, and appurtenances thereunto belonging.

(m) "To record" means to record in accordance with the provisions of section 45–501.

(n) "Common expenses" means and includes—

(1) all sums lawfully assessed against the unit owners by the council of co-owners;

(2) expenses of administration, maintenance, repair, or replacement of the common areas and facilities, including repair and replacement funds as may be established;

(3) expenses agreed upon as common expenses by the council of co-owners;

(4) expenses declared common expenses by the provisions of this chapter or by the bylaws.

(o) "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after deduction of the common expenses.

(p) All words used herein include the masculine, feminine, and neuter genders and include the singular or plural numbers, as the case may be. (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88–218, § 2; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(a)(b).)

AMENDMENTS

1964—Section 1(a)(b) of act Aug. 21, 1964, amended paragraph (a) by striking "a floor" and inserting in lieu thereof "one or more floors," also amended paragraph (c) by striking the reference (k) and inserting in lieu thereof (h).

EFFECTIVE DATE

See section 5–933.

§ 5–903. Horizontal property regimes.

Whenever the owners or the co-owners of any square or lot shall subdivide the same into a condominium project in conformity with section 5–909 with a plat of condominium subdivision there shall be established a horizontal property regime. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 3.)

§ 5–904. Status of condominium units within a horizontal property regime.

Once the property is subdivided into the horizontal property regime, a condominium unit in the building may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and entirely independent of the other condominium units in the building of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 4.)

EFFECTIVE DATE

See section 5–933.

§ 5–905. Joint tenancies, tenancies in common, tenancies by the entirety.

Any condominium unit may be held and owned by more than one person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real property tenancy relationship recognized under the laws of the District of Columbia. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 5.)

§ 5–906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.

(a) A condominium unit owner shall have the exclusive fee simple ownership of his unit and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the property, equivalent to the percentage representing the value of the unit to the value of the whole property.

(b) Said percentage interest shall not be separated from the unit to which it appertains.

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the building, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall, nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the Government of the United States and the government of the District of Columbia acting in the performance of their official duties.

(d) The said basic value of said undivided common interest shall be fixed for the purposes of this

chapter and shall not fix the market value of the individual condominium units and undivided share interests and shall not prevent each co-owner from fixing a different circumstantial value to his condominium unit and undivided share interest in the common elements, in all types of acts and contracts.

(e) In addition to the foregoing provisions, the declaration may contain other provisions and attachments relating to the condominium and to the units which are not inconsistent with this chapter.

(f) Voting at all meetings of the co-owners shall be on a percentage basis, and the percentage of the vote to which each co-owner is entitled shall be the individual percentage assigned to his unit in the declaration.

(g) Individual condominium unit deeds may make reference to this chapter, the condominium subdivision and land subdivision plats referred to in section 5–910 hereof, the declaration provided for in this section, the bylaws of the council of co-owners, and the deeds may include any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 6.)

EFFECTIVE DATE

See section 5–933.

§ 5–907. Indivisibility of common elements—Limitation upon partition.

(a) The common elements, both general and limited, shall remain undivided. No unit owner, or any other person, shall bring any action for partition or division of the co-ownership permitted under section 93 and related provisions of the Act of March 3, 1901 (31 Stat. 1203), as amended by the Act of June 30, 1902 (32 Stat. 523, ch. 1329), against any other owner or owners of any interest or interests in the same horizontal property regime so as to terminate the regime.

(b) Nothing contained in this section shall be construed as a limitation on partition by the owners of one or more units in a regime as to the individual ownership of such unit or units without terminating the regime or as to the ownership of property outside the regime: *Provided,* That upon partition of any such individual unit the same shall be sold as an entity and shall not be partitioned in kind. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88–218, § 7.)

REFERENCE IN TEXT

The section of the act referred to in the text is now set out as section 16–2901 of the Code.

EFFECTIVE DATE

See section 5–933.

§ 5–908. Use of elements held in common, right to repair common elements.

(a) Each co-owner may use the elements held in common in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

(b) The manager, board of directors or of administration, as the case may be, shall have an irrevocable right and an easement to enter units to make repairs to common elements or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the unit. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88–218, § 8.)

EFFECTIVE DATE

See section 5–933.

§ 5–909. Condominium subdivision.

(a) Whenever the owner or the co-owners of any square or lot duly subdivided in conformity with section 1–620 or other applicable laws of the District of Columbia, shall deem it necessary to subdivide the same into a condominium project of convenient condominium units for sale and occupancy and means of access for their accommodation, he may cause a plat or plats to be made by the surveyor of the District of Columbia, on which said plats, together, shall be expressed—

(1) the ground dimensions as set forth under such section 1581 and the exterior lengths of all lines of the building;

(2) for each floor or floors, in the instance of condominium units consisting of more than one floor, of the condominium subdivision, the number or letter, dimensions, and lengths of finished interior surfaces of unit dividing walls of the individual condominium units; the elevations (or average elevation, in case of slight variance) from a fixed known point, of finished floors and of finished ceilings of such condominium units situate upon the same floor, and further expressing the area, the relationship of each unit to the other upon the same floor and their relationship to the common elements upon said floor: *Provided,* That when a unit is situated on more than one floor, access shall be provided within the unit between the portion of the unit on any one floor and the portion of the unit on any other floor in addition to any outside access which might be provided to any portion of the unit;

(3) the dimensions and lengths of the interior finished surface of walls, elevations, from said same fixed known point, of the finished floors and of the finished ceilings of the general common elements of the building, and, in proper case, of the limited common elements restricted to a given number of condominium units, expressing which are those units;

(4) any other data necessary for the identification of the individual condominium units and the general and limited common elements.

(b) And said owners or co-owners may certify such condominium subdivisions under their hands and seals in the presence of two credible witnesses, upon the same plat or on a paper or a parchment attached thereto. And the same shall thereupon be put up, labeled, indexed, and preserved for record and deposit with the office of the surveyor for the District of Columbia in like manner as land subdivisions have been heretofore recorded or in such other books as the said surveyor may prescribe. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88–218, § 9; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(c).)

AMENDMENTS

1964—Section 1(c) of act Aug. 21, 1964, amended subseciton (a)(2) by inserting after "for each floor", the words, "or floors, in the instance of condominium units consisting of more than one floor," and by adding at the end the Proviso clause.

EFFECTIVE DATE

See section 5–933.

§ 5–910. Reference to plat.

When a plat of a condominium project and subdivision shall be so certified, examined, and recorded, the purchaser of any condominium unit thereof or any person interested therein, may refer to the plat and record for description in the same manner as to squares and lots divided between the Commissioners and the original proprietors and in the same manner as has been heretofore the practice for land subdivisions: *Provided,* That said purchaser or other person interested therein shall also make reference to the plat of land subdivision appearing prior to the establishment of the condominium subdivision thereupon. Any such conveyance of an individual condominium unit shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, and of any accessory units, if any, appertaining to said condominium unit without specifically or particularly referring to the same. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88–218, § 10.)

§ 5–911. Termination and waiver of regime.

(a) All the co-owners or the sole owner of a building constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of two credible witnesses, upon the same plat or upon a paper or parchment attached thereto: *Provided,* That the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment: *Provided further,* That should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver: *Provided further,* That if within ninety days of the date of such damage or destruction:

(1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in sections 5–921 and 5–922 or,

(2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of section 5–921 and if the co-owners do not terminate and waive the regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the United States District Court for the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served on the person designated in the bylaws in conformity with section 5–914(a)(7). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

(b) In the event a horizontal property regime is terminated or waived, the property shall be deemed to be owned in common by the co-owners, and the undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such co-owner in the common elements in the property as set forth in the declaration under section 6 hereof.

(c) Upon such termination and waiver the provisions of section 5–910 shall no longer be applicable and reference to the principal property thereupon, shall be to the plat and record of the prior land subdivision and thereupon the restraint against partition or division of the co-ownership imposed by section 5–907 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88–218, § 11; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(d).)

AMENDMENT

1964—Section 1(d) of act Aug. 21, 1964, amended subsection (a)(2) by striking out "as provided in section 5–914(g)" and inserted in lieu thereof "on the person designated in the bylaws in conformity with section 5–914(a)(7)."

EFFECTIVE DATE

See section 5–933.

§ 5–912. Merger no bar to reconstitution.

The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88–218, § 12.)

§ 5–913. Bylaws, availability for examination.

(a) The administration of every building constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in section 5–906 shall be available for examination by all the co-owners, their duly authorized attorneys or agents, at convenient hours on

working days that shall be set and announced for general knowledge.

(b) A true copy of said bylaws shall be annexed to the declaration referred to in section 5–906 and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

(c) Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager, the administrator, board of directors or of administration, or as specified in the bylaws or in proper case, by an aggrieved unit owner. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88–218, § 13.)

EFFECTIVE DATE

See section 5–933.

§ 5–914. Necessary contents of bylaws—Modification of system.

(a) The bylaws must necessarily provide for at least the following:

(1) Form of administration, indicating whether this shall be in charge of an administrator, manager, or of a board of directors, or of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

(2) Method of calling or summoning the co-owners to assemble; that a majority of co-owners is required to adopt decisions, except as otherwise provided in this chapter; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded.

(3) Care, upkeep, and surveillance of the building and its general or limited common elements and services.

(4) Manner of collecting from the co-owners for the payment of common expenses.

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the building and for the proper care of the general or limited common elements and to provide services for the building.

(6) Such restrictions on or requirements respecting the use and maintenance of the units and the use of the common elements as are designed to prevent unreasonable interference with the use of the respective units and of the common elements by the several unit owners.

(7) Designation of person authorized to accept service of process in any action relating to two or more units or to the common elements as authorized under section 5–924. Such person must be a resident of and maintain an office in the District of Columbia.

(8) Notice as to the existence or nonexistence of a declaration in trust for the enforcement of the lien for common expenses permitted under section 5–919.

(b) The sole owner of the building, or if there be more than one, the co-owners representing two-thirds of the votes provided for in section 5–906 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88–218, § 14.)

EFFECTIVE DATE

See section 5–933.

§ 5–915. Books of receipts and expenditures—Availability for examination.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88–218, § 15.)

§ 5–916. Common profits, contributions for payment of common expenses of administration and maintenance.

(a) The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentages established by section 5–906: *Provided,* That for purposes of the application of the District of Columbia Income and Franchise Tax Act of 1947 (61 Stat. 331), as amended, the council of co-owners shall, in accordance, with the provisions of said Act, be regarded as constituting an unincorporated business and shall file returns and pay taxes upon the taxable income derived from the common areas without regard to the "common profits" as defined in this chapter.

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements, and, in proper case, of the limited common elements of the building and toward any other expenses lawfully agreed upon by the council of co-owners.

(c) No owner shall be exempt from contributing toward such common expenses by waiver of the use or enjoyment of the common elements both general and limited, or by the abandonment of the condominium unit belonging to him.

(d) Said contribution may be determined, levied, and assessed as a lien on the first day of each calendar or fiscal year, and may become and be due and payable in such installments as the bylaws may provide, and said bylaws may further provide that upon default in the payment of any one or more of such installments, the balance of said lien may be accelerated at the option of the manager, board of directors, or of management and be declared due and payable in full. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88–218, § 16.)

REFERENCE IN TEXT

The Franchise Tax Act referred to in subsection (a) is the act described in the note to section 47–1551 under the heading "Short Title".

EFFECTIVE DATE

See section 5–933.

§ 5–917. Priority of liens.

The lien determined, levied and assessed in accordance with section 5–916 shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

(a) Real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and water charges and sanitary sewer service charges levied on the condominium unit, and judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this subparagraph.

(b) The liens of any deeds of trust, mortgage instruments, or encumbrances duly recorded on the condominium unit prior to the assessment of the lien thereon or duly recorded on said unit after receipt of a written statement from the manager, board of directors, or of management reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument, or encumbrance.

Upon a voluntary sale or conveyance of a condominium unit all unpaid assessments against a grantor co-owner for his pro rata share of the expenses to which section 5–916 refers shall first be paid out of the sales price or by the grantee in the order of preference set forth above. Upon an involuntary sale through foreclosure of a deed of trust, mortgage, or encumbrance having preference as set forth in subparagraph (b) of this section a purchaser thereunder shall not be liable for any installments of such lien as became due prior to his acquisition of title. Such arrears shall be deemed common expenses, collectible from all co-owners, including such purchaser. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88–218, § 17.)

EFFECTIVE DATE

See section 5–933.

§ 5–918. Joint and several liability of purchaser and seller for amounts owing under section 16—Purchaser's recovery, purchaser's or lender's right to a statement setting forth amount due.

The purchaser of a condominium unit in a voluntary sale shall be jointly and severally liable with the seller for the amounts owing by the latter under section 5–916 upon his interest in the condominium unit up to the time of conveyance; without prejudice to the purchaser's right to recover from the other party the amounts paid by him as such joint debtor: *Provided,* That any such purchaser, or a lender under a deed of trust, mortgage, or encumbrance, or parties designated by them, shall be entitled to a statement from the manager, board of directors, or of administration, as the case may be, setting forth the amount of unpaid assessments against the seller or borrower, and the unit conveyed or encumbered shall not be subject to a lien for any unpaid assessment in excess of the amount set forth. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88–218, § 18.)

§ 5–919. Supplemental method of enforcement of lien.

(a) In addition to proceedings available at law or equity for the enforcement of the lien established by section 5–916, all the owners of property constituted into a horizontal property regime may execute bonds conditioned upon the faithful performance and payment of the installments of the lien permitted by section 5–916 and may secure the payment of such obligations by a declaration in trust recorded among the land records of the District of Columbia, granting unto a trustee or trustees appropriate powers to the end that upon default in the performance of such bond, said declaration in trust may be foreclosed by said trustee or trustees, acting at the direction of the manager, board of directors, or of management, as is proper practice in the District of Columbia in foreclosing a deed of trust.

(b) And the bylaws may require in the event such bonds have been executed and such declaration in trust is recorded that any subsequent purchaser of a condominium unit in said horizontal property regime shall take title subject thereto and shall assume such obligations: *Provided,* That the said lien, bond, and declaration in trust shall be subordinate to and a junior lien to liens for real estate taxes and other taxes arising out of or resulting from the ownership, use, or operation of the common areas, liens for special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and liens for water charges and sanitary sewer service charges levied on the condominium unit, and to judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and to judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this section then or thereafter accruing against the unit and to the lien of any duly recorded deeds of trust, mortgages, or encumbrances previously placed upon the unit and said lien, bond, and declaration in trust shall be and become subordinate to any subsequently recorded deeds of trust, mortgages, or encumbrances: *Provided,* That the lender thereunder shall first obtain from the manager, board of directors, or of administration a written statement as provided in section 5–918 reflecting that payments due under this lien are current as of the date of recordation of such subsequent deed of

trust, mortgage, or encumbrance. (Dec. 21, 1963. 77 Stat. 457, Pub. L. 88–218, § 19.)

EFFECTIVE DATE

See section 5–933.

§ 5–920. Insuring building against risks—Individual rights of co-owners.

The manager or the board of directors, if required by the bylaws or by a majority of the co-owners, or at the request of a mortgagee having a first mortgage of record covering a unit, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the council of co-owners, as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 20.)

§ 5–921. Application of insurance proceeds to reconstruction—Pro rata distribution in certain cases—Rules governing.

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the building.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the buildings and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 21.)

EFFECTIVE DATE

See section 5–933.

§ 5–922. Sharing of reconstruction cost where building is not insured or insurance indemnity is insufficient.

Where the building is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new building costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under section 5–917. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 22.)

§ 5–923. Separate taxation.

(a) For the purposes of assessment and taxation of property constituted into a horizontal property regime and to conform to the system of numbering squares, lots, blocks, and parcels for taxation purposes in effect in the District of Columbia, each condominium unit duly situate upon a subdivided lot and square shall bear a number or letter that will distinguish it from every other condominium unit situate in said lot and square.

(b) Each of said condominium units shall be carried on the records of the District of Columbia as a separate and distinct entity and all real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, shall be assessed, levied, and collected against each of said several separate and distinct units in conformity with the percentages of co-ownership established by section 5–906, and in accordance with the provisions of law in effect in the District of Columbia relating to assessment, levying, and collection of real property taxes.

(c) The council of co-owners shall be liable for the filing of returns and payment of the tax on personal property located in the common areas and held for use or used in a trade or business or held for sale or rent.

(d) The title to an individual condominium unit shall not be divested or in anywise affected by the forfeiture or sale of any or all of the other condominium units for delinquent real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas; special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, or water charges and sanitary sewer service charges: *Provided,* That the real estate taxes, the duly levied share of such other taxes and of such special assessments, and the water and sanitary sewer service charges on or against said individual condominium unit are currently paid. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 23.)

EFFECTIVE DATE

See section 5–933.

§ 5–924. Actions—Right to separate release of judgment.

(a) Without limiting the right of any co-owner, actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager, or board of directors, or of administration with respect to any cause of action

relating to the common elements or more than one unit.

(b) Service of process on two or more unit owners in any action relating to the common elements may be made on the person designated in the bylaws in conformity with section 5–914(a)(7).

(c) In the event of entry of a final judgment as a lien against two or more unit owners, the unit owners of the separate units may remove their unit and their percentage interest in the common elements from the lien thereof by payment of the fractional proportional amounts attributable to each of the units affected. Said individual payment shall be computed by reference to the percentage established pursuant to section 5–906. After such partial payment, partial discharge, or release or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of the lien of such judgment.

(d) Such partial payment, satisfaction, or discharge shall not prevent such a judgment creditor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88–218, § 24; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(e).)

AMENDMENT

1964—Section 1(e) of act Aug. 21, 1964, amended the setcion by striking out "section 5–914(g)" and inserting "section 5–914(a)(7)."

EFFECTIVE DATE

See section 5–933.

§ 5–925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.

(a) Subsequent to establishment of a horizontal property regime as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created and enforced only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel or real property subject to individual ownership: *Provided,* That no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to the provisions of section 38–101, against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the council of co-owners, the manager, or board of directors in accordance with this chapter, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the provisions of section 38–101, against each of the units and shall be subject to the provisions of subparagraph (b) hereunder. Notice of said lien may be served on the person designated in conformity with section 5–914(a)(7).

(b) In the event of filing of a lien against two or more units and their respective percentage interest in the common elements, the unit owners of the separate units may remove their unit and their percentage interest in the common elements appurtenant thereto from the said lien by payment, or may file a written undertaking with surety approved by the court as provided in section 38–118, of the fractional or proportional amounts attributable to each of the units affected. Said individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to section 5–906. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88–218, § 25; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(f).)

AMENDMENT

1964—Section 1(f) act Aug. 21, 1964, amended subsection (a) by striking out "section 5–915(g)" and inserting "section 5–914(a)(7)."

EFFECTIVE DATE

See section 5–933.

§ 5–926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.

The rule of property known as the rule against perpetuities, and the rule of property known as the rule restricting unreasonable restraints on alienation, sections 45–102 and 45–104, shall not be applied to defeat any of the provisions of this chapter, or of any declaration, bylaws, or other document executed in accordance with this chapter as to the condominium project. This exemption shall not apply to estates in the individual condominium units. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88–218, § 26.)

§ 5–927. Supplement of existing code provisions.

The provisions of the chapter shall be in addition to and supplemental to all other provisions of law of the District of Columbia and wheresoever there appears in the provisions the words "square", "lot", "land", "ground", "parcel", "property", "block", or other designation denoting a unit of land, where appropriate to implement this chapter, after such descriptive terms, there shall be deemed inserted reference to a condominium unit, condominium subdivision, or horizontal property regime, whichever shall be appropriate to effect the ends and purposes of this chapter: *Provided,* That wherever the application of the provisions of this chapter conflict with the application of such other provisions, the provisions of law generally applicable to buildings in like use in the District of Columbia shall prevail. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88–218, § 27.)

EFFECTIVE DATE

See section 5–933.

§ 5–928. Regulations of the Board of Commissioners and the zoning commission.

In order to bring horizontal property regimes into compliance with the laws and regulations in effect in the District of Columbia, the Board of Commissioners of the District of Columbia and the Zoning Commission of the District of Columbia are each hereby authorized to adopt and enforce such regulations as either deems proper, within its respective general authority. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88–218, § 28.)

§ 5–929. Interpretation.

(a) This chapter shall be interpreted in such a manner as to require each condominium unit and each horizontal property regime to be in compliance with all District of Columbia laws and regulations relating to property of like type, whether it be designed for residence, for office, for the operation of any industry or business, or for any other use. The owner of each condominium unit shall be responsible for the compliance of his unit with such laws and regulations, and the council of co-owners and any person designated by them to manage the regime shall be jointly and severally liable for compliance with all such laws and regulations in all matters relating to the common elements of the regime.

(b) Notwithstanding any provision of this chapter, the owner of each condominium unit shall have the same responsibility for the payment of all taxes, assessments, and other charges due to the District of Columbia as does any other person or property owner similarly situated.

(c) Notwithstanding any provision of this chapter, the method of enforcement available to the District of Columbia to collect any tax or assessment or any charge from any individual property owner or any building owner shall be available to collect taxes, assessments, and charges from individual condominium unit owners and from the council of co-owners.

(d) Nothing contained in this chapter shall in any way be construed as affecting the right to institute and maintain eminent domain proceedings. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88–218, § 29.)

EFFECTIVE DATE

See section 5–933.

§ 5–930. Supplemental provisions relating to sewer and water services.

(a) Notwithstanding any provision of this chapter, the developer or co-owners of any horizontal property regime shall have the right to have installed for each and every individual unit a separately metered water service. Such installations shall be subject to all laws and regulations then or thereafter in effect in the District of Columbia. Upon the establishment of such separate water services each unit owner and his successor in title and persons occupying such units shall be responsible for the payment to the District of Columbia of all water and sewer charges rendered and the Commissioners of the District of Columbia are authorized to enforce any and all of the remedies for collection of such charges as are authorized by law.

(b) A common water service is hereby expressly authorized for any horizontal property regime and in the event that a horizontal property regime is provided with a common water service to the charges for sewer and water service shall be billed to the person designated by the co-owners, pursuant to the bylaws, to manage the regime. In the event that the entire sewer and water charges are not paid within the time specified by law for the payment of sewer and water charges, the Commissioners shall be authorized to enforce payment in any manner authorized by law, including, but not limited to, the assessment of an additional charge for late payment, the shutting off of water to the regime and the enforcement of the liens for nonpayment of such charges against the individual units in conformity with the percentage of co-ownership established by section 5–906. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88–218, § 30.)

EFFECTIVE DATE

See section 5–933.

§ 5–931. Authority or Board of Commissioners Under Reorganization Plan Numbered 5 of 1952.

Nothing in this chapter or in any amendments made by this chapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88–218, § 31.)

§ 5–932. Severability.

If any provision of this chapter, or any section, sentence, clause, phrase, or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88–218, § 32.)

§ 5–933. Effective date.

This chapter shall take effect one hundred and twenty days after its enactment. [December 21, 1963.] (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88–218, § 33.)

Chapter 1.—HEALTH DEPARTMENT—ORGANIZATION

Sec.
6–119j–1. Immediate treatment of minor with venereal disease.

§ 6–112. Certain ordinances, rules, and regulations of Board of Health, legalized and made valid.

PARTIAL REPEAL

Commissioners order dated Aug. 14, 1962, number 62–1459, repealed sections 12 and 12a of the Health Regulation known as "An Ordinance to prevent the sale of unwholesome food in the cities of Washington and Georgetown", as amended, be and they are hereby repealed. This repeal was made pursuant to authority of section 6–114.

§ 6–119j–1. Immediate treatment of minor with venereal disease.

If a minor appears in any clinic, hospital, or other facility of the Department of Public Health of the government of the District of Columbia, and the Director of Public Health or his authorized agent, after having caused a medical examination to be made of such minor, has probable cause to believe that such minor is affected with a venereal disease or is a carrier of a venereal disease, and if, as a result of such examination, the Director of Public Health or his authorized agent determines that immediate medical treatment of the minor will adequately control the disease of the minor so as to protect his health and the health of others without having said minor detained as provided in sections 6–118 to 6–119k, the Director of Public Health or his authorized agent shall present to such minor a paper, upon which such minor shall state either (1) that he consents to such treatment, in which event such treatment shall be given to the minor forthwith, or (2) that he refuses to consent to such treatment, in which event no such treatment shall be given to him pursuant to this section. The Director of Public Health or his authorized agent shall exercise reasonable diligence in ascertaining the whereabouts of a parent, or of a person standing in loco parentis to such minor, and if such whereabouts are ascertained shall as soon as practical notify such parent or loco parentis that such minor is affected with a venereal disease, or is a carrier of a venereal disease, and whether he has received or refused such treatment. (Aug. 11, 1939, ch. 691, § 13, as added Oct. 11, 1963, 77 Stat. 246, Pub. L. 88–137, § 1.)

COMMISSIONERS AUTHORITY NOT AFFECTED

Section 3 of act Oct. 11, 1963, provides as follows:

Nothing in this Act [renumbering section 13 as 14 (6–119k) adding a new section 13 (6–119j–1)] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners, or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

§ 6–119k. Construction of provisions.

Each and every provision of section 6–118 to 6–119k shall be construed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation. (Aug. 11, 1939, ch. 691, § 14, as added Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Renumbered Oct. 11, 1963, 77 Stat. 246, Pub. L. 88–137, § 1.)

AMENDMENTS

1963—Section 1 of act Oct. 11, 1963, amended section by changing the section number from 13 to 14 and inserting a new section 13 classified as section 6–119j–1. Section 2 of the same act, amended section 3 of the act of Aug. 8, 1946, 60 Stat. 919, so that the words in section 3 reading "renumbered as section 13" now reads "renumbered as section 15."

Chapter 12.—OFFICE OF CIVIL DEFENSE

§ 6–1202. Office of civil defense authorized—Director and other personnel—Compensation.

To carry out the purposes of this chapter, the Commissioners of the District of Columbia are authorized to establish in the municipal government of such District an Office of Civil Defense to consist of a Director and such other personnel as may be needed. Such Director shall be the executive head of such office.

Notwithstanding the limitation of any law, there may be employed in such Office of Civil Defense any person who has been retired from any of the uniformed services of the United States or any office or position in the Federal or District governments, and except as hereinafter provided, while so employed in such Office of Civil Defense any such retired person may receive the compensation authorized for such employment or the retirement compensation or annuity, whichever he may elect, and upon the termination of such employment, he shall be restored to the same status as a retired officer or employee with the same retirement compensation or annuity to which he was entitled before having been employed in such Office of Civil Defense. While any person who has been retired from any of the uniformed services of the United States is so employed in such Office of Civil Defense, he may receive the compensation authorized for such employment and his retired or retirement pay, subject to section 201 of the Dual Compensation Act. (Aug. 11, 1950, 64 Stat 438, ch. 686, § 2; Aug. 19, 1964, 87 Stat. 489, Pub. L. 88–448, title IV, § 401(b).)

REFERENCE IN TEXT

Section 201 of the "Dual Compensation Act" is a part of act of Aug. 19, 1964, Pub. L. 88–448. For provisions of the section see 5 U.S. Code 3102.

AMENDMENTS

1964—Section 401(b) of act Aug. 19, 1964, amended the second paragraph to read as above set out. For comparison of section prior to this amendment see main volume of the code.

EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 31–631.

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chapter 6.—REPAIR AND CONSTRUCTION

§ 7–608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

The Commissioners of the District of Columbia are authorized and empowered, whenever in their judgment the public health, safety, or comfort require it, or whenever application shall be made therefor, accompanied by a deposit equal to one-half the estimated cost of the work, to improve and repair alleys and sidewalks, and to construct sewers and sidewalks in the District of Columbia of such form and materials as they may determine, and to pay the total cost of such work from appropriations for assessment and permit work.

Said commissioners shall give notice by advertisement, twice a week for two weeks in some newspaper published in the city of Washington, of any assessment work proposed to be done by them under this section, designating the location and the kind of work to be done, specifying the kind of materials to be used, the estimated cost of the improvement, and fixing a time and place when and where property-owners to be assessed can appear and present objections thereto, and for hearing thereof. One-half of the total cost of the assessment work herein provided for, including the expenses of the assessment, shall be charged against and become a lien upon abutting property, and an assessment therefor shall be levied pro rata according to the linear frontage of said property: *Provided,* That no such assessment shall be levied against abutting property for the cost of repairing alleys or sidewalks when the damage requiring such repair is caused by the growth of roots of trees on public space or the cause of such damage is otherwise beyond the control of the owner of such property.

* * * * *

(Sept. 25, 1962, 76 Stat. 598, Pub. L. 87–700, § 1.)

AMENDMENTS

Section 1 of act Sept. 25, 1962, amended the second sentence in the second paragraph of the section to relieve abutting property owners from assessment for repairs to alleys and sidewalks where the cause of the damage is beyond their control or where it is caused by roots of trees on public space. The language of the amendment is set out above beginning with the words "said property" preceding the proviso clause and ending with "such property" at the end of the proviso clause.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of act Sept. 25, 1962, provides: "This Act shall take effect ten days after its approval."

APPLICABILITY OF 1962 AMENDMENT

Section 2 of act Sept. 25, 1962, provides: "That the amendment made by the first section of this Act [set out in this section] shall apply to repairs to alleys or to sidewalks the completion of which repairs shall occur on or after the effective date of this Act."

Chapter 8.—REMOVAL OF SNOW AND ICE

§ 7–802. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand and ashes.

NOTES TO DECISIONS

6. Liability

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in District of Columbia was on United States, and therefore District of Columbia was not liable for injuries sustained by employee of Department of Agriculture in fall on icy sidewalk. *D. J. Daniels-Lumley* v. *United States et al.* (1962, 306 F. 2d 769, 113 U.S. App. D.C. 162).

§ 7–803. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.

NOTES TO DECISIONS

2. Responsibility for removal

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in District of Columbia was on United States, and therefore District of Columbia was not liable for injuries sustained by employee of Department of Agriculture in fall on icy sidewalk. *D. J. Daniels-Lumley* v. *United States et al.* (1962, 306 F. 2d 769, 113 U.S. App. D.C. 162).

Chapter 12.—MISCELLANEOUS

§ 7–1205. Denomination of streets as "business streets."

The Commissioners of the District of Columbia are authorized and directed to denominate portions of streets in the District of Columbia as business streets and to authorize the use, on such portions of streets, for business purposes by abutting propertyowners, under such general regulations as said commissioners may prescribe, of so much of the sidewalk and parking as may not be needed, in the judgment of said commissioners, by the general public, under the following conditions, namely: First, wherein a portion of a street not already denominated a business street a majority of a frontage not less than three blocks in length is occupied and used for business purposes; and, second, where a portion of a street has already been denominated a business street, and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (Feb. 2, 1904, 33 Stat. 10, ch. 89.)

CODIFICATION

This section is the same as the last proviso of section 8–108.

This section is set out in this supplement to correct typographical errors.

CROSS REFERENCES

Commissioners' general authority to regulate parking, see § 40–603.

§ 7–1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.

* * * * *

(3) After construction, the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed; and

(4) The portions of such streets planned or projected as above which lie within a right-of-way belonging to such railroad company shall be dedicated by such company as a public thoroughfare when the portions of such street adjoining such right-of-way have been similarly dedicated or otherwise acquired.

(Feb. 28, 1903, 32 Stat. 918, ch. 856, § 10; May 9, 1941, 55 Stat. 182, ch. 93, § 1; July 25, 1956, 70 Stat. 638, ch. 720, § 1.)

CODIFICATION

Clauses (3) and (4) of paragraph 2 of this section are set out in this supplement to correct typographical errors which appear in these clauses as they are set out in the main volume of the Code.

§ 7–1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.

* * * * *

BRANCH SIDINGS OVER FIRST STREET SOUTHWEST

That the Philadelphia, Baltimore, and Washington Railroad Company is hereby authorized to construct, maintain, and operate at grade two branch sidings from its present tracks in square 607 over First Street to square 663 between S and T Streets Southwest, Washington, D.C. Such sidings shall be constructed in accordance with plans approved by the Commissioners of the District of Columbia.

SEC. 2. Congress reserves the right to alter, amend, or repeal this Act. (Sept. 26, 1961, 75 Stat. 686, Pub. L. 87–325, §§ 1, 2.)

§ 7–1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.

CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

§ 7–1236. Employment of temporary laborers and mechanics—Per diem rate of pay.

CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

§ 7–1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.

CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

§ 7–1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.

CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see Title 40, §§ 327 to 332, and Title 5, § 673c of the U.S. Code.

Chapter 14.—PUBLIC AIRPORT

Sec.
7–1401. Construction and operation of airport authorized.
7–1402. Selection of site.
7–1403. Acquisition and construction of facilities.
7–1404. Maintenance and operation.
7–1405. Lease of space or property.
7–1406. Contracts for supplies and services.
7–1407. Transfers of property by federal agencies.
7–1408. Authority to make arrests—Park Police patrol.
7–1409. Agreements for municipal services.
7–1410. Penalty for violations.
7–1411. Definitions.
7–1412. Appropriations authorized.

§ 7–1401. Construction and operation of airport authorized.

Administrator of the Federal Aviation Agency (hereinafter referred to as the "Administrator") is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor). (Sept. 7, 1950, 64 Stat. 770, ch. 905, § 1; Aug. 23, 1958, 72 Stat. 807 Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, amended the section by striking the words "Secretary of Commerce" and inserting in lieu the words "Administrator of the Federal Aviation Agency" and by striking the word "Secretary" and inserting in lieu the word "Administrator".

§ 7–1402. Selection of site.

For the purpose of carrying out this chapter, the Administrator is authorized to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), such lands and interests in lands and appurtenances thereto, including avigation easements or air-space rights, as may be necessary or desirable for the construction, maintenance, improvement, operation and protection of the airport: *Provided,* That before making commitments for the acquisition of land, or the transfer of any lands, the Administrator shall consult and advise with the National Capital Park and Planning Commission as to the conformity of the proposed location with the Commission's comprehensive plan for the National Capital and its environs, and said Commission shall, upon request, submit a report and recommendations thereon within thirty days: *Provided further,* That the choice of site by the Administrator shall be made only after consultation with the governing body in the county in which the airport is to be located, with respect to the suitability of the site to be selected, and its possible impact

on the vicinity. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 2; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, amended section by striking the word "Secretary" wherever same appeared and inserting in lieu the word "Administrator".

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 7–1403. Acquisition and construction of facilities.

For the purposes of this chapter, the Administrator is empowered to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), rights-of-way or easements for roads, trails, pipe lines, power lines, railroad spurs, and other similar facilities necessary or desirable for the construction or proper operation of the airport.

The Administrator is authorized to construct any streets, highways, or roadways (including bridges) as may be necessary to provide access to the airport from existing streets, highways, or roadways. Upon completion of construction of any street, highway, or roadway within the District of Columbia, such street, highway, or roadway shall be transferred to the District of Columbia without charge and thereafter shall be maintained by the District of Columbia. Upon construction of any street, highway, or roadway within a State or political subdivision thereof, such street, highway, or roadway may be transferred to such State or political subdivision thereof, without charge, on the condition that such street, highway, or roadway thereafter be maintained as a public street, highway, or roadway by such State or political subdivision thereof. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 3; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared in the section and substituted the word "Administrator" in lieu thereof.

NOTES TO DECISIONS

1. Standing to sue

Where none of plaintiff's land was sought to be condemned, his suit to enjoin taking of property, more than one-half mile distant from his own land, for use as airport, did not present a "justiciable controversy", and his suit was premature. *Jasper* v. *Sawyer et al.* (1953, 92 U.S. App. D.C. 94, 205 F. 2d 700).

§ 7–1404. Maintenance and operation.

The Administrator shall have control over and responsibility for the care, operation, maintenance, improvements, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof: *Provided,* That the authority herein contained may be delegated by the Administrator to such official or officials of the Federal Aviation Agency as the Administrator may designate. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 4; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared and substituted the word "Administrator," also struck out the words "Department of Commerce" and inserted in lieu the words "Federal Aviation Agency".

§ 7–1405. Lease of space or property.

The Administrator is empowered to lease under such conditions as he may deem proper and for such periods as may be desirable space or property within or upon the airport for purposes essential or appropriate to the operation of the airport: *Provided,* That no lease for the use of any hangar or space therein shall extend for a period exceeding three years. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 5; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

§ 7–1406. Contracts for supplies and services.

The Administrator is authorized to contract with any person for the furnishing of supplies or performance of services at or upon the airport necessary or desirable for the proper operation of the airport, including but not limited to, contracts for furnishing food and lodging, sale of aviation fuels, furnishing of aircraft repairs and other aeronautical services, and such other services and supplies as may be necessary or desirable for the traveling public. No such contract, not including contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than five years, except the restaurant. The provisions of section 5 of title 41, U.S. Code, shall not apply to contracts authorized under this section, to leases authorized under section 7–1405 hereof, or to contracts for architectural or engineering services necessary for the design and planning of the airport. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 6; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

§ 7–1407. Transfers of property by federal agencies.

Any executive department, independent establishment, or agency of the Federal Government or the District of Columbia, for the purposes of carrying out this chapter, is authorized to transfer to the Administrator, without compensation, upon his request, any lands, interests in lands (including avigation easements or air-space rights), buildings, property, or equipment under its control and in excess of its own requirements, which the Administrator may consider necessary or desirable for the construction, care, operation, maintenance, improvement, or protection of the airport. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 7; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

§ 7–1408. Authority to make arrests—Park Police patrol.

(a) The Administrator and any Federal Aviation Agency employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Secretary of the Interior, in his discretion, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses and in the same manner and circumstances as are provided in this section with respect to employees designated by the Administrator.

(d) The officer on duty in command of those employees designated by the Administrator as provided in subsection (a) of this section may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Commissioner; and such collateral shall be deposited with such United States Commissioner. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 8; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in subsection (a), (b), and (d); substituted "Federal Aviation Agency" for "Department of Commerce" in subsection (a) and amended subsection (c) to read as above set out.

NOTES TO DECISIONS

1. Arrest without warrant

A motorist, who had received a summons from an officer to appear before a court commissioner to answer a charge of a parking violation, could not be validly arrested without a warrant for failure to post collateral. *P. Y. Craig* v. *J. T. Cox & A. C. Doak* (D.C. Mun. App. 1961, 171 A. 2d 259).

Bail follows arrest, and is not given to avoid an arrest. *Id.*

§ 7–1409. Agreements for municipal services.

The Administrator may enter into agreements with the State, or any political subdivision thereof, in which the airport or any portion thereof is situated, for such State or municipal services as the Administrator shall deem necessary to the proper and efficient operation and protection of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however,* That where the charge for any such service is established by the laws of the State, the Administrator may not pay for such service in excess of the charge so established. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 9; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

§ 7–1410. Penalty for violations.

Any person who knowingly and willfully violates any rule, regulation, or order issued by the Administrator under this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 or to imprisonment not exceeding six months, or to both such fine and imprisonment. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 10; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

§ 7–1411. Definitions.

Unless the context otherwise requires, the definitions of the words and phrases used in this chapter shall be the definitions assigned to such words and phrases by the Civil Aeronautics Act of 1938, as amended. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 11.)

REFERENCES IN TEXT

Civil Aeronautics Act of 1938, as amended, referred to in the text, which was classified to U.S. Code, Title 49, § 401 et seq., was repealed and is now covered by U.S. Code, Title 49, § 1301 et seq.

§ 7–1412. Appropriations authorized.

There is hereby authorized to be appropriated such sum as may be necessary for the construction of the airport authorized by this chapter, and such sum shall remain available until expended. There are hereby authorized to be appropriated such other sums as may be necessary to carry out the purposes of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 12; as amended July 11, 1958, 72 Stat. 354, Pub. L. 85–511, § 1.)

AMENDMENT

1958—Act July 11, 1958, removed the limitation on the amount authorized to be appropriated for construction.

TITLE 8.—PARKS AND PLAYGROUNDS

Chapter 1.—PARKS AND PLAYGROUNDS

§ 8–115. Transfer of jurisdiction over property between United States and District of Columbia.

Federal and District authorities administering properties within the District of Columbia owned by the United States or by the said District are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon: *Provided,* That prior to the consummation of any transfer hereunder such proposed transfer shall be recommended by the National Capital Planning Commission: *Provided further,* That all such transfers and agreements shall be reported to Congress by the District authorities concerned. (May 20, 1932, ch. 197, § 1, 47 Stat. 161, as amended June 6, 1924, ch. 270, § 9 as added July 19, 1952, ch. 949, § 1, 66 Stat. 790, and amended Aug. 30, 1954, ch. 1076, § 1(20), 68 Stat. 967.)

AMENDMENTS

1954—Act Aug. 30, 1954, amended section by repealing the requirement that the Federal authorities concerned should also report to Congress all transfers and agreements authorized by this section.

TRANSFER OF FUNCTIONS

Transfer of functions to National Park Service and to Administrator of General Services, see notes under section 8–108.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission", on authority of act July 19, 1952, which transferred functions of the latter to the former.

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia.

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Chapter 1.—REGULATING PROVISIONS

Sec.
9–139. Tunnel, location of under Capitol and Botanic Garden grounds.
9–140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioners authorized to use certain areas for tunnel.
9–141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.
9–142. Restoration of grounds to their original condidition.
9–143. United States not to incur any expense or liability in connection with tunnel.
9–144. Architect authorized to convey to Commissioners of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.
9–145. Commissioners authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

§ 9–137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.

The officer on duty in command of those employees designated by the Commissioners as provided in section 9–134 may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under sections 9–134 to 9–138, for appearance in court or before the appropriate United States commissioner; and such collateral shall be deposited with the United States commissioner sitting in the district where the offense has been committed. (July 3, 1956, 70 Stat. 488, ch. 508, § 4.)

This section is set out in this supplement to correct an error in the internal reference as it appears in the main volume of the Code.

§ 9–139. Tunnel, location of under Capitol and Botanic Garden grounds.

The Commissioners of the District of Columbia are authorized and directed, in constructing, maintaining, and operating a vehicular tunnel in the city of Washington, District of Columbia, extending from the vicinity of Second and C Streets Southwest, to the vicinity of Third and Constitution Avenue Northwest, as a part of the Innerloop Freeway System, to locate a portion of such tunnel under square W–576, which is a part of the United States Botanic Garden grounds, and reservation 12, which is a part of the United States Capitol Grounds. (July 21, 1964, 78 Stat. 333, Pub. L. 88–381, § 1.)

§ 9–140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioners authorized to use certain areas for tunnel.

Subject to the approval of the Architect of the Capitol and to such conditions as he may prescribe, the Commissioners of the District of Columbia are authorized to make such use of square W–576 and reservations 12 and 6B as may be necessary for the construction of the tunnel, including borings and other preliminary work and storing of materials, and the reconstruction of that section of the Tiber Creek sewer located under square W–576 and reservation 6B. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 2.)

§ 9–141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.

Except as provided in section 9–144, nothing in sections 9–139 to 9–145 shall be construed to grant to the Commissioners of the District of Columbia any right, title, or interest in or to any real property of the United States, and reservation 12 shall in its entirety continue to be a part of the United States Capitol Grounds, and square W–576 shall in its entirety continue to be a part of the United States Botanic Garden grounds. The Commissioners shall have jurisdiction and control of, and sole responsibility for the operation and maintenance of, those portions of the tunnel beneath square W–576 and reservation 12. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 3.)

§ 9–142. Restoration of grounds to their original condition.

All areas of square W–576 and reservations 12 and 6B disturbed by reason of operations under sections 9–139 to 9–145 shall, except as otherwise provided in sections 9–139 to 9–145, be restored to their original condition to the satisfaction of the Architect of the Capitol. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 4.)

§ 9–143. United States not to incur any expense or liability in connection with tunnel.

Except as provided in section 9–144, the United States shall not incur any expense or liability whatsoever under or by reason of sections 9–139 to 9–145, or be liable under any claim of any nature or kind that may arise from the construction, or the operation or maintenance, of that portion of the tunnel authorized by sections 9–139 to 9–145. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 5.)

§ 9–144. Architect authorized to convey to Commissioners of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.

The Architect of the Capitol is authorized to convey to the Commissioners of the District of Columbia, for purposes of constructing the Innerloop Freeway System, all, or so much as he determines necessary, of the right, title, and interest of the United States in and to reservations 6B, 6C, 6D, 6E, 6F, and 286 in the District of Columbia. Any real property conveyed under this section shall thereafter be under the sole jurisdiction and control of the Commissioners of the District of Columbia. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 6.)

§ 9–145. Commissioners authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

Notwithstanding the joint resolution entitled "Joint resolution providing for the construction and maintenance of a National Gallery of Art", approved March 24, 1937 (50 Stat. 51; 20 U.S.C. 71), the Commissioners of the District of Columbia are authorized to use the east sixty-five feet of the area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, in the District of Columbia for the construction and maintenance of a vehicular tunnel, on condition that after such construction is completed (1) the surface thereof is maintained at its original grade, (2) no portion of the tunnel, including ventilating equipment and utilities, is nearer the surface than eight feet, and (3) the surface ingress and egress to such property is not limited. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 7.)

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

§ 9–220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—June 30, 1973, last day for advancement of loans.

* * * * *

(b) To assist in financing the cost of constructing facilities required for activities financed by the general fund of the District, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided,* That the total principal amount of loans advanced pursuant to this section shall not exceed $175,000,000: *Provided further,* That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budgets submitted for the District, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further,* That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in the National Capital Planning Act of 1952. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in the Treasury of the United States to the credit of the general fund of the District.

* * * * *

(f) No loans shall be advanced pursuant to this section after June 30, 1973. (June 6, 1958, 72 Stat. 183, Pub. L. 85–451, § 1; Aug. 27, 1963, 77 Stat. 130, Pub. L. 88–104, § 2(a)(b).)

AMENDMENTS

1963—Section 2(a) of act Aug. 27, 1963, amended subsection (b) by striking out "$75,000,000" and inserting in lieu thereof "$175,000,000." Section 2(b) amended subsection (f) by striking out "June 30, 1963" and inserting in lieu thereof "June 30, 1973."

Chapter 5.—REPAIRS AND IMPROVEMENTS

§ 9–501. Repairs and improvements—Working fund.

SIMILAR PROVISIONS

1964—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88–479, § 15.
1963—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88–352, § 15.
1962—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87–867, § 15.

CONTINUATION OF ACT APR. 8, 1960

Section 15 of act Sept. 21, 1961, 75 Stat. 564, Pub. L. 87–265, provided that: "limitations and legislative provisions contained in the District of Columbia Appropriations Act, 1961, shall be continued for the fiscal year 1962:"

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

Sec.
10–114. Containers for fluid and frozen dairy products—Labeling.

§ 10–114. Containers for fluid and frozen dairy products—Labeling.

(a) All fluid and frozen dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, buttermilk, chocolate milk, chocolate drink, ice cream, and frozen custard, and frozen dairy desserts such as sherbet, water ice, and ice milk, shall, when sold or offered for sale in package form, be packaged only in units of gallons, one and one-half gallons, two and one-half gallons, integral multiples of the gallon, or binary-submultiples of the gallon of not less than one fluid ounce. Packages of less than one fluid ounce shall be permitted if the net contents of each such package are clearly and permanently marked thereon and if the labeling of the package conforms with the requirements of this Act or such package be one of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this Act. Notwithstanding the foregoing, frozen dairy products and frozen dairy desserts may be sold or offered for sale in individually package or wrapped portions each containing four or more but less than sixteen fluid ounces, in integral multiples of one ounce, or, if less than four ounces, in multiples of one-half ounce. The package or wrapper of each individual portion of any such frozen dairy product or frozen dairy dessert shall be clearly labeled to show the net contents in fluid ounces. When two or more such individual portions of a frozen dairy product or frozen dairy dessert are sold or offered for sale in an outside container, the exterior of such container shall be clearly labeled to show the number of individual portions contained therein and the total net contents of such container, in fluid ounces.

(b) Bottles or containers used for the retail sale of milk, buttermilk, chocolate milk, chocolate drink, or cream shall have clearly blown or otherwise permanently marked in the side of each bottle or container, or printed on the cap or stopple thereof, the name and address of the person, firm, or corporation who or which bottled such milk, buttermilk, chocolate milk, chocolate drink, or cream and the capacity of such bottle or container, except that a package containing less than one fluid ounce need not be labeled as to quantity if such package be one of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this Act. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 14; Apr. 27, 1945, 59 Stat. 98, ch. 99, § 4; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88–405, § 1.)

Reference in Text

The "Act" referred to in the text is the act of Mar. 3, 1921, 41 Stat. 1221, ch. 118, as amended, generally classified to chapter 1, title 10.

Amendments

1964—Section 1 of act Aug. 7, 1964, amended section to read as above set out. For provision of section prior to this amendment see main voume of the code.

§ 10–119. Standard liquid gallon, quart, pint, half pint, gill, and fluid ounce—Automatic pumps—Measure for ice cream, sherbet, and similar frozen food products.

Partial Repeal

The second paragraph of this section was repealed by section 2, act Aug. 7, 1964, 78 Stat. 382, Pub. L. 88–405. Section, act Mar. 3, 1921, ch. 118, § 18a, as added July 7, 1932, 47 Stat. 609, ch. 442, as amended Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1. It dealt with the standard measure for ice cream and like products. See new provisions in section 10–114.

PART II

JUDICIARY AND JUDICIAL PROCEDURE

Part II consisting of Titles 11 to 17 inclusive was enacted into law by Pub. L. 88–241, § 1, Dec. 23, 1963, 77 Stat 478, effective Jan. 1, 1964

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.
TITLE 12. RIGHT TO REMEDY.
TITLE 13. PROCEDURE GENERALLY.
TITLE 14. PROOF.
TITLE 15. JUDGMENTS AND EXECUTIONS—FEES AND COSTS.
TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
TITLE 17. REVIEW.

TABLE SHOWING DISPOSITION OF SECTIONS OF FORMER TITLES 11 TO 17 INCLUSIVE

Part II Former Sections	*Part II New Sections*
11–101	11–101.
11–204	11–301.
11–206	11–302, 11–341.
11–207	11–341.
11–211	Repealed.
11–301	16–1302.
11–303	Omitted.
11–305	11–521.
11–306	11–521.
11–306a	Omitted.
11–308	11–521.
11–312	11–501.
11–319	13–701.
11–321	Omitted.
11–326	15–320.
11–327	15–321.
11–328	15–322.
11–329	Repealed.
11–332	11–503.
11–401	11–502.
11–501	11–522.
11–502	Repealed.
11–503	11–522.
11–504	11–522, 16–3102.
11–505	11–541.
11–506	16–3103.
11–507	Repealed.
11–508	16–3104.
11–509	16–3105.
11–510	16–3106.
11–511	Repealed.
11–512	16–3107.
11–513	16–3108.
11–514	16–3109.
11–515	16–3110.
11–516	Repealed.
11–517	Repealed.
11–518	16–3113.
11–519	16–3111.
11–520	16–3112.
11–601	Repealed.
11–609	Repealed.
11–610	Repealed.
11–619	Repealed.
11–620	Repealed.
11–621	Repealed.
11–623	Repealed.
11–624	Repealed.
11–701	Repealed.
11–702	Repealed.
11–703	11–961.
11–704	11–961.
11–705	11–981.
11–706	Repealed.
11–707	Repealed.
11–708	Repealed.
11–709	Repealed.
11–710	11–984.
11–710a	11–984.
11–710b	11–985.
11–710c	11–984.
11–711	11–932.
11–712	11–983.
11–713	11–931.
11–714	11–931.
11–715	13–702.
11–715a	16–702, 16–705, 16–706.
11–716	11–2301, 11–2306, 11–2309 to 11–2313.
11–716a	11–2301, 11–2306, 11–2311 to 11–2313, 16–705.
11–716b	11–2309, 11–2310, 11–2312, 11–2314.
11–717	Repealed. See 13–101.
11–718	15–131, 15–132.
11–719	15–711.
11–720	15–712.
11–721	11–2314.
11–722	15–709.
11–722a	15–713.
11–724	15–131.
11–724a	16–709.
11–725	16–3731 to 16–3733.
11–726	16–3734.
11–727	16–3735, 16–3736.
11–728	Repealed. See 13–101.
11–729	16–3737.
11–730	16–3738.
11–731	16–3739.
11–732	16–3740.
11–733	16–533.
11–734	Repealed.
11–735	16–1501.
11–736	16–1502.
11–737	16–1503.
11–738	16–1504.
11–739	16–1505.
11–740	Repealed. See 11–982.
11–741	14–104.
11–742	15–133.
11–743	15–132.
11–744	15–521.
11–745	15–522.
11–746	15–523.
11–747	15–524.
11–748	13–302, 15–709.
11–748a	16–701, 16–703, 16–704, 16–706, 16–707, 16–708.

Part II Former Sections	Part II New Sections
11–748b	16–703.
11–748c	16–703.
11–748d	16–703.
11–748e	15–710.
11–749	15–713.
11–751	11–901.
11–751a	11–101, 11–341, 11–703, 11–901, 11–902 to 11–908, 11–931 to 11–934, 11–961, 11–963, 11–981, 11–983, 11–984, 11–985, 11–1101, 11–1102, 11–1121, 11–1122, 11–1141, 11–1161, 11–1301 to 11–1303, 11–1321 to 11–1323, 11–1341 to 11–1343, 11–1503, 11–1586, 11–1701, 11–2306, 11–2311 to 11–2314, 13–101, 13–301, 13–302, 13–702, 14–104, 15–101, 15–102, 15–131 to 15–133, 15–310, 15–318, 15–521, 15–522, 15–709 to 15–712, 15–714, 16–301, 16–501, 16–533, 16–578, 16–581, 16–701 to 16–707, 16–709, 16–710, 16–1501, 16–1505, 16–731, 16–3901, 16–3902, 16–3905, 16–3907, 16–3910.
11–752	11–901, 11–902.
11–753	11–902.
11–754	11–903, 11–904, 11–905, 11–906, 11–907, 11–908, 11–931, 11–932, 11–933, 11–934.
11–754a	11–983.
11–754b	11–935.
11–755	11–901, 11–961, 11–963, 11–983, 11–1101, 11–1301, 11–1302, 11–1303, 11–1321 to 11–1323, 11–1341 to 11–1343, 11,2301, 11–2306, 11–2309, 11–2310, 11–2311, 11–2312, 11–2313, 11–2314, 13–101, 13–301, 13–302, 13–702, 14–104, 15–132, 15–709, 15–711, 16–701, 16–702, 16–703, 16–704, 16–705, 16–706, 16–707, 16–709, 16–3731.
11–755a	11–963.
11–755b	15–715.
11–755 note	Repealed.
11–755c	11–521(a)(2), 11–963.
11–755d	11–521(a)(2), 11–963.
11–756	11–962, 11–982, 11–1301, 11–1302, 11–1303, 11–1321, 11–1322, 11–1323, 11–1341, 11–1342, 11–1343, 13–101.
11–757	16–710.
11–758	11–1101.
11–759	Repealed. See 11–1101.
11–760	11–1102.
11–761	11–1121.
11–762	11–1141.
11–763	11–1161, 15–132.
11–764	11–1122.
11–765	13–301, 13–302.
11–766	13–101, 15–710.
11–767	11–741, 17–302, 17–305, 17–306, 17–307.
11–768	11–1103.
11–769	11–1141.
11–770	Repealed.
11–771	11–701, 11–702, 11–703, 11–704, 11–721, 11–722, 11–741, 11–762, 11–904.
11–771a	11–101, 11–321, 11–701 to 11–704, 11–721, 11–722, 11–741, 11–742, 11–761, 11–904, 11–1701, 11–2104, 13–101, 13–302, 17–101, 17–103, 17–301 to 17–307.
11–772	11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.
11–773	11–321, 17–101, 17–102, 17–103, 17–104.
11–774	11–761, 13–101, 13–302.
11–775	11–2104, 11–2105.
11–776	11–1701.
11–777	Repealed.
11–801	11–1301.
11–802	11–1321.
11–803	11–1302.
11–804	11–1341, 11–1342.
11–805	16–3902.
11–806	11–1322.
11–807	16–3903, 16–3909.
11–808	16–3906.
11–809	16–3904.
11–810	11–1343.
11–811	16–3907.
11–812	16–3908.
11–813	11–1323.
11–814	16–3901.
11–815	13–101.
11–816	11–1303.
11–817	Repealed. See 11–741, 17–301 et seq.
11–818	16–3905.
11–819	16–3910.
11–820	Repealed.
11–901	11–1501.
11–902	16–2316.
11–903	16–2316.
11–904	11–1501, 11–1582.
11–905	11–1504.
11–906	11–1551, 11–1553, 11–1554, 11–1583, 16–2301.
11–907	11–523, 11–1554, 11–1556, 11–1557.
11–908	16–2302.
11–909	16–2303.
11–910	16–2304.
11–911	16–2305.
11–912	16–2306.
11–913	11–1552.
11–914	11–1553.
11–915	16–2307, 16–2308.
11–916	16–2309.
11–917	16–2310.
11–918	16–2311.
11–919	11–1502, 11–1503.
11–920	16–2314.
11–921	11–1503.
11–922	11–1521, 11–1523, 11–1524, 11–1525.
11–923	11–1523.
11–924	11–1524.
11–925	11–1521, 11–1522.
11–926	16–2312.
11–927	16–2313.
11–928	11–1588.
11–929	11–1586.
11–930	11–1526, 13–101.
11–931	11–1584.
11–932	11–1583.
11–933	11–1581.
11–935	16–2384.
11–936	11–2301, 11–2306, 11–2311, 11–2312, 11–2313, 16–2382.
11–937	11–2306, 11–2309, 11–2310, 11–2312, 11–2314.
11–938	16–2315.
11–939	11–1585.
11–940	11–1587.
11–941	Repealed.
11–942	Repealed.
11–942–1	11–1589.
11–942a	16–2383.
11–951	11–1555, 11–1583, 16–2342.
11–952	16–2343.
11–953	16–2344.
11–954	16–2345.
11–955	16–2346.

Part II Former Sections	*Part II New Sections*
11–956	16–2347.
11–957	16–2348.
11–958	16–2349.
11–959	16–2350.
11–960	16–2351.
11–961	11–523, 11–1556, 16–2355, 16–2381.
11–962	16–2352.
11–963	16–2353.
11–964	16–2354.
11–965	11–1586.
11–966	16–2356.
11–967	Repealed.
11–1002	Repealed.
11–1104	Omitted. See 40 U.S.C. 19.
11–1201	Repealed. See 11–1901.
11–1202	Repealed. See 1–213, 1–213b.
11–1203	11–1902, 11–1905.
11–1204	11–1902.
11–1205	11–1903, 11–1904.
11–1206	11–1902.
11–1207	Repealed.
11–1208	Repealed.
11–1301	11–2101.
11–1302	11–2102.
11–1303	11–2103.
11–1304	11–2105.
11–1401	11–2303, 11–2304.
11–1402	11–2305.
11–1403	11–2305.
11–1404	11–2304.
11–1405	11–2312.
11–1406	Repealed.
11–1407	11–2306.
11–1408	11–2306.
11–1409	11–2307.
11–1410	11–2308.
11–1411	11–2304, 11–2306.
11–1412	11–2309.
11–1413	Repealed. See 28 U.S.C. 1866.
11–1416	Repealed.
11–1417	11–2301.
11–1418	11–2301, 11–2303.
11–1420	11–2302.
11–1421	Omitted. See 5 U.S.C. 30n.
11–1422	Omitted. See 5 U.S.C. 30o.
11–1423	Omitted. See 5 U.S.C. 30p.
11–1501	15–701.
11–1502	15–702.
11–1503	15–707.
11–1504	Omitted.
11–1505	15–708.
11–1506	15–703.
11–1507	15–704, 15–705.
11–1508	Omitted.
11–1509	15–704, 15–706.
11–1515	11–1906.
11–1516	15–702.
11–1517	Omitted. See 28 U.S.C. 1920.
11–1518	Omitted. See 28 U.S.C. 1920.
11–1519	15–705.
11–1520a	15–714.
11–1521	15–716.
12–101	12–101.
12–102	12–102.
12–103	12–102.
12–104	12–102.
12–105	12–102.
12–106	12–103.
12–107	12–102.
12–108	12–102.
12–109	12–102.
12–110	12–102.
12–111	12–102.
12–112	12–104.
12–113	15–319.
12–114	12–102.
12–115	12–102.
12–116	12–102.
12–201	12–301, 12–302.
12–202	12–305.
12–203	13–307.
12–204	12–308.
12–205	12–303.
12–206	12–304.
12–207	12–306.
12–208	12–309.
13–101	Repealed. See 28 U.S.C. 1691.
13–102	13–303.
13–103	13–334.
13–104	13–335.
13–105	13–332.
13–106	13–332.
13–107	13–333.
13–108	13–336, 13–337.
13–109	13–338.
13–110	13–339.
13–111	13–340.
13–112	13–340.
13–113	13–341.
13–201	Omitted.
13–202	Omitted.
13–203	Omitted.
13–204	Repealed.
13–205	15–106.
13–206	Omitted.
13–207	Omitted.
13–208	Repealed. See 13–101.
13–209	Repealed.
13–210	Omitted.
13–211	Repealed. See 13–101.
13–212	Omitted.
13–213	Repealed.
13–214	Repealed.
13–215	Repealed.
13–216	Repealed.
13–217	Repealed.
13–218	Omitted.
13–219	Omitted.
13–220	Omitted.
13–221	Repealed.
13–222	Repealed.
13–301	Repealed.
13–302	Repealed.
13–303	Repealed.
13–304	Omitted.
13–305	Omitted.
13–306	Omitted.
13–307	Omitted.
13–308	Omitted.
13–309	Omitted.
13–310	Omitted.
13–311	Omitted.
13–312	Omitted.
13–313	Omitted.
13–314	Omitted.
13–315	Omitted.
13–316	Omitted.
13–317	Omitted.
13–318	Omitted.
13–319	Omitted.
13–320	Omitted.
13–401	Repealed.
14–101	14–101.
14–102	14–101.
14–103	Repealed.
14–104	14–102.
14–201 to 14–203	Repealed.
14–204	14–103.
14–301	14–301.
14–302	14–302.
14–303	14–303.
14–304	14–304.
14–305	14–305.
14–306	14–306.
14–307	14–306.
14–308	14–307.
14–309	14–308.
14–310	14–309.
14–401	14–501.

Part II Former Sections	*Part II New Sections*
14–402	14–502.
14–403	14–503.
14–404	14–504.
14–405	Repealed.
14–406	14–505.
14–407	14–506.
14–501	14–701.
14–502	14–702.
15–101	15–101.
15–102	15–101.
15–103	15–102.
15–104	Omitted.
15–105	Repealed.
15–106	Omitted.
15–107	15–103.
15–108	15–104.
15–109	15–105.
15–110	Repealed.
15–111	15–106.
15–201	15–302.
15–202	15–303.
15–203	15–304.
15–204	15–305.
15–205	15–306.
15–206	15–307.
15–207	15–308.
15–208	15–309.
15–209	15–310.
15–210	15–311.
15–211	15–312.
15–212	15–313.
15–213	15–323.
15–214	15–314.
15–215	15–315.
15–216	15–316.
15–217	15–317.
15–218	15–301, 16–541.
15–301	16–542.
15–302	15–543.
15–303	15–544.
15–304	16–545, 16–552.
15–305	16–546 to 16–548.
15–306	16–548, 16–549.
15–307	16–550.
15–308	16–551.
15–309	16–553.
15–310	16–554.
15–311	16–555.
15–312	16–556.
15–313	15–318.
15–314	16–572.
15–315	16–573.
15–316	16–574.
15–317	16–571, 15–575, 16–576.
15–318	16–577.
15–319	16–578, 16–579, 16–580.
15–320	16–581.
15–401	15–501.
15–402	15–502.
15–403	15–503.
16–101	16–101.
16–102 to 16–106	Repealed.
16–208	Repealed.
16–209	Repealed.
16–210	16–301.
16–211	16–302.
16–212	16–303.
16–213	16–304.
16–214	16–305.
16–215	16–306.
16–216	16–307.
16–217	16–308.
16–218	16–309.
16–219	16–310.
16–220	Repealed.
16–221	16–311.
16–222	16–312.
16–223	16–314.
16–224	16–313.
16–225	16–315.
16–301	16–501.

Part II Former Sections	*Part II New Sections*
16–302	16–502.
16–303	16–521.
16–304	16–504.
16–305	16–505.
16–306	16–503.
16–307	16–506.
16–308	16–507.
16–309	16–508.
16–310	16–509.
16–311	16–510, 16–527.
16–312	16–511 to 16–513.
16–313	16–515, 16–516.
16–314	16–518.
16–315	16–519.
16–316	16–520.
16–317	16–522.
16–318	16–523.
16–319	16–524.
16–320	16–524.
16–321	16–517.
16–322	16–525.
16–323	16–526.
16–324	16–527.
16–325	16–528.
16–326	16–529.
16–327	16–529.
16–328	16–529.
16–329	16–529.
16–330	16–529.
16–331	16–530.
16–332	16–532.
16–333	16–514.
16–334	16–531.
16–335	16–533.
16–401	16–902.
16–402	16–903.
16–403	16–904.
16–404	16–905.
16–405	16–906.
16–406	16–907.
16–407	16–908.
16–408	16–909.
16–409	16–910.
16–410	16–911.
16–411	16–912.
16–412	16–913.
16–413	16–914.
16–414	16–915.
16–415	16–916.
16–416	Repealed. See 11–141, 13–101.
16–417	16–917.
16–418	16–918.
16–419	16–919.
16–420	16–922.
16–421	16–920.
16–422	16–921.
16–501	16–1101.
16–502	16–1102.
16–503	16–1103.
16–504	Repealed. See 13–101.
16–505	16–1104.
16–506	16–1105.
16–507	16–1106.
16–508	16–1107.
16–509	16–1108.
16–510	16–1101.
16–511	16–1109.
16–512	16–1110.
16–513	16–1111.
16–514	16–1112.
16–515	16–1113.
16–516	16–1114.
16–517	16–1114.
16–518	16–1115.
16–519	16–1116.
16–520	16–1117.
16–521	16–1118.
16–522	16–1119.
16–523	16–1120.
16–524	16–1121.
16–525	16–1123.

Part II Former Sections	*Part II New Sections*
16–526	16–1122.
16–527	16–1151 to 16–1153.
16–528	16–1154.
16–529	16–1155, 16–1156.
16–530	16–1157.
16–531	16–1158.
16–532	16–1124.
16–533	16–1124.
16–534	16–1124.
16–601	16–1301, 16–1311.
16–602	Repealed.
16–603	16–1312.
16–604	16–1313.
16–605	16–1314 to 16–1316.
16–606	16–1317.
16–607	16–1318.
16–608	16–1319.
16–609	16–1320.
16–610	16–1321.
16–611	Repealed.
16–612	16–1331.
16–613	16–1332 to 16–1334.
16–614	16–1335.
16–615	16–1301, 16–1336.
16–616	16–1301, 16–1337.
16–617	16–1338.
16–618	Repealed.
16–619	16–1301, 16–1351, 16–1352.
16–620	Repealed. See 16–1314.
16–621	Repealed.
16–622	Repealed.
16–623	Repealed.
16–624	Repealed.
16–625	Repealed.
16–626	Repealed.
16–627	Repealed.
16–628	16–1353 to 16–1355.
16–629	16–1356, 16–1357.
16–630	16–1358.
16–631	16–1359.
16–632	16–1360.
16–633	16–1361.
16–634	16–1362.
16–635	Repealed.
16–636	16–1363.
16–637	16–1364.
16–638	16–1365.
16–639	16–1366.
16–640	16–1367.
16–641	Repealed.
16–642	16–1368.
16–643	Repealed.
16–644	Repealed.
16–701	16–1701.
16–702	16–1702.
16–703	16–1703.
16–704	16–1704.
16–706	Omitted. See 16–1701–4.
16–707	Omitted. See 16–1701–4.
16–801	16–1901.
16–802	16–1902.
16–803	16–1903.
16–804	16–1904.
16–805	16–1905.
16–806	16–1906.
16–807	16–1907.
16–808	16–1908.
16–901	16–2101.
16–902	16–2102.
16–903	16–2103.
16–904	16–2104.
16–905	16–2105.
16–906	16–2106.
16–1001 to 16–1010	Repealed.
16–1101	16–2501.
16–1102	16–2502.
16–1103	16–2503.
16–1201	16–2701.
16–1202	16–2702.
16–1203	16–2703.
16–1301	16–2901.
16–1302	16–2921.
16–1303	16–2922.
16–1304	16–2923.
16–1305	16–2924.
16–1306	16–2925.
16–1401, 16–1402	Repealed.
16–1501	16–3301.
16–1601	16–3501.
16–1602	16–3502.
16–1603	16–3503.
16–1604	16–3504.
16–1605	16–3505.
16–1606	16–3506.
16–1607	16–3507.
16–1608	16–3508.
16–1609	16–3509.
16–1610	16–3510.
16–1611	16–3511.
16–1701 to 16–1719	Repealed.
16–1801	16–3701.
16–1802	16–3702.
16–1803	16–3703.
16–1804	16–3704.
16–1805	16–3705.
16–1806	16–3706.
16–1807	16–3707.
16–1808	Repealed. See 13–101.
16–1809	16–3708.
16–1810	16–3709.
16–1811	16–3710.
16–1812	16–3711.
16–1813	16–3712.
16–1814	16–3713.
16–1901	Repealed.
16–1902	Repealed.
16–1903	13–501.
16–1904	13–502.
16–1905	Repealed.
16–1906	13–503.
16–1907	13–504.
16–1908	13–505.
16–1909	15–107.
16–2001	16–4101.
16–2002	16–4102.
16–2003 to 16–2005	Omitted.
19–401	11–504.
19–402	11–504.
19–403	11–505, 11–506.
19–404a	11–505.
19–406	11–505.
19–407	11–505.
19–408	11–505.
19–409	11–504.
19–410	11–505.
19–411	11–505.
23–103	11–963.
24–102	16–710.
24–401	11–963.

TRANSFERRED SECTIONS

Showing sections of Part II, D.C. Code, 1961 ed., which are transferred to other parts of that Code, or to the United States Code

Section:	Transferred to:
11–102	Title 2 U.S.C. § 137c.
11–103 to 11–105	Title 40 U.S.C. ch. 1.
11–330	D.C. Code, Title 47, ch. 1, § 1262.
11–1601 to 11–1624	D.C. Code, Title 30, ch. 3.
12–301 to 12–306	D.C. Code, Title 28, ch. 35.
12–401 to 12–403	D.C. Code, Title 28, ch. 31.
16–705	D.C. Code, Title 22, ch. 5, § 508.

TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

Chap.		Sec.
1.	General Provisions	11–101
3.	United States Court of Appeals for the District of Columbia Circuit	11–301
5.	United States District Court for the District of Columbia	11–501
7.	District of Columbia Court of Appeals	11–701
9.	District of Columbia Court of General Sessions	11–901
11.	Domestic Relations Branch of Court of General Sessions	11–1101
13.	Small Claims and Conciliation Branch of Court of General Sessions	11–1301
15.	Juvenile Court of the District of Columbia	11–1501
17.	Miscellaneous Provisions Relating to Courts and Judges	11–1701
19.	Coroner	11–1901
21.	Attorneys	11–2101
23.	Jurors and Jury Commissioners	11–2301

Enacting Clause

Section 1 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 478, provided in part: "That the general and permanent laws relating to the judiciary and judicial procedure of the District of Columbia are revised, codified, and enacted as Part II of the District of Columbia Code, 'Judiciary and Judicial Procedure', and may be cited 'D.C. Code §—', as follows:"

Effective Date

Section 20 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, provided: "This Act shall take effect on January 1, 1964."

Savings and Severability Provisions

Section 14 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 618, provided: "If any part of Part II of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], is held invalid, the remainder of Part II shall not be affected thereby."

Legislative Construction

Section 15 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 618, provided: "An inference of a legislative construction may not be drawn by reason of the subchapter, chapter, or title in Part II of the District of Columbia Code, as set out in section 1 of this Act, in which any section is placed, or by reason of the catchlines used."

Provisions Relating to Courts, Judges and Employees—Continuation of Existing Law

Section 17 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 618, provided in part: "(a) Part II of the District of Columbia Code, set out in section 1 of this Act [Titles 11 to 17], with respect to the organization of each of the several courts and their divisions and branches therein provided for, is a continuation of existing law, and the tenure of the judges, officers, and employees thereof, in office on January 1, 1964, is not affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of Part II, as set out in section 1 of this Act [Titles 11 to 17], pursuant to his prior appointment. Loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of those courts on the effective date this Act shall not result from its enactment."

Appropriations

Section 18 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 619, provided: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of Part II, District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17]."

Table of British Statutes Omitted

Section 19 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 619, provided that the following British statutes have no further force and effect in the District of Columbia:

(1) 9 Henry III (1225), chapter 8, sections 1, 2, 3, 4 (D.C. Code, 1961 ed., secs. 15–213, 16–2003 to 16–2005);

(2) 13 Edward I (1285), chapter 31 (D.C. Code, 1961 ed., sec. 11–321);

(3) 14 Edward III (1340), chapter 6, section 1 (D.C. Code, 1961 ed., sec. 13–3C4);

(4) 36 Edward III (1362), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 13–201);

(5) 17 Richard II (1393), chapter 6, section 1 (D.C. Code, 1961 ed., sec. 13–219);

(6) 11 Henry IV (1409), chapter 3, section 1 (D.C. Code, 1961 ed., sec. 13–307);

(7) 9 Henry V (1421), chapter 4, section 1 (D.C. Code, 1961 ed., sec. 13–305);

(8) 4 Henry VI (1425), chapter 3, section 1 (D.C. Code, 1961 ed., sec. 13–306);

(9) 8 Henry VI (1429), chapter 12, sections 2, 4 (D.C. Code, 1961 ed., secs. 13–308 to 13–310);

(10) 8 Henry VI (1429), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 13–311);

(11) 4 Henry VII (1487), chapter 20 (D.C. Code, 1961 ed., sec. 13–220);

(12) 23 Henry VIII (1531), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 11–1517);

(13) 18 Elizabeth (1576), chapter 14, sections 1, 2 (D.C. Code, 1961 ed., sec. 13–314);

(14) 27 Elizabeth (1585), chapter 5, sections 1, 2 (D.C. Code, 1961 ed., secs. 13–206, 13–207);

(15) 4 James I (1606), chapter 3, section 2 (D.C. Code, 1961 ed., sec. 11–1517);

(16) 21 James I (1623), chapter 13, sections 2, 3 (D.C. Code, 1961 ed., sec. 13–315);

(17) 16 Charles II (1664), chapter 7, sections 2, 3 (D.C. Code, 1961 ed., secs. 16–706, 16–707);

(18) 16 and 17 Charles II (1664), chapter 8, sections 1, 2, 5 (D.C. Code, 1961 ed., secs. 13–316, 13–317);

(19) 29 Charles II (1676), chapter 3, sections 14, 15, 16 (D.C. Code, 1961 ed., secs. 15–104, 15–207);

(20) 29 Charles II (1676), chapter 7, section 6 (D.C. Code, 1961 ed., sec. 13–102);

(21) 8 and 9 William and Mary (1697), chapter 11, sections 1, 8 (D.C. Code, 1961 ed., secs. 11–1518, 13–205, 15–111);

(22) 4 Anne (1705), chapter 16, sections 1, 2, 4, 7, 11, 12, 27 (D.C. Code, 1961 ed., secs. 13–206, 13–210, 13–212, 13–218, 13–318, 13–319, 16–101);

(23) 6 Anne (1707), chapter 18, sections 1, 2, 3, 4, 5 (D.C. Code, 1961 ed., secs. 16–527 to 16–531);

(24) 9 Anne (1710) chapter 14, sections 1, 2, 4, 5, 8 (D.C. Code, 1961 ed., secs. 16–701 to 16–705);

(25) 9 Anne (1710), chapter 20, section 7 (D.C. Code, 1961 ed., sec. 13–320);

(26) 5 George I (1718), chapter 13, section 1 (D.C. Code, 1961 ed., sec. 13–312);

(27) 4 George II (1731), chapter 26, section 1 (D.C. Code, 1961 ed., sec. 13–202);

(28) 4 George II (1731), chapter 28, sections 2, 3, 4 (D.C. Code, 1961 ed., secs. 16–532 to 16–534);

(29) 6 George II (1733), chapter 14, section 5 (D.C. Code, 1961 ed., sec. 13–203); and

(30) 11 George II (1738), chapter 19, section 12 D.C. Code, 1961 ed., sec. 16–502).

REPEALS AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 21 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, provided: "(a) The sections of the Revised Statutes of the District of Columbia, and Acts or parts of Acts, enumerated in the schedule below, are hereby repealed. Any rights or liabilities existing under the statutes or parts thereof so repealed, and any cases, actions or proceedings instituted under, or growing out of, any of the statutes or parts thereof so repealed, are not affected by the repeal. However, laws becoming effective after August 10, 1963, and inconsistent with this Act, shall supersede it to the extent of the inconsistency.

"(b) If any section of the Revised Statutes of the District of Columbia, or act, or part of an act, listed in the schedule below, has been repealed heretofore, the fact of its being listed in the schedule below shall not be construed as a revival thereof or as a recognition or acknowledgment that the section, act, or part of an act was in force at the time of the specific repeal effected by this section." [The "schedule below" referred to in text is set out as a part of Pub. L. 88–241.]

Chapter 1.—GENERAL PROVISIONS

Sec.
11–101. Judicial power.

§ 11–101. Judicial power.

The judicial power in the District of Columbia is vested in:

(1) inferior courts, namely,

The District of Columbia Court of General Sessions;

The Juvenile Court of the District of Columbia; and

(2) superior courts, namely,

The District of Columbia Court of Appeals;

The United States District Court for the District of Columbia;

The United States Court of Appeals for the District of Columbia Circuit; and

The Supreme Court of the United States.

(Dec. 23, 1963, 77 Stat. 478, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–101, 11–751a, 11–771a (Mar. 3, 1901, ch. 854, § 2, 31 Stat. 1190; Mar. 19, 1906, ch. 960, 34 Stat. 73; Feb. 17, 1909 ch. 134, 35 Stat. 623; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 6, 56 Stat. 190, 194; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates section 11–101 of D.C. Code, 1961 ed., with section 11–751a thereof which changed the name of the Muncipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and with section 11–771a thereof which changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals. The latter two sections are also shown as consolidated with a number of other sections carried in this revised part, to indicate the basis for substituting these new court designations.

Word "Circuit" is added to the name of the United States Court of Appeals for the District of Columbia, to conform with Title 28 U.S.C. §§ 41, 43, and Rule 1 of the General Rules of the Court.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutional courts 1
Historical 2
Justices of the peace 3
Municipal court 4
Terms 5

1. Constitutional courts

The District Court of the United States for the District of Columbia and the United States Court of Appeals for the District of Columbia are constitutional courts of the United States ordained and established under article 3 of the Federal Constitution, *O'Donoghue* v. *United States* (1933, 53 S. Ct. 740, 289 U.S. 516, 77 L. Ed. 1356).

2. Historical

In 1863, all the powers and jurisdiction, previously possessed by the Circuit Court of the District, including the appellate jurisdiction from justices of the peace, were transferred by Congress to the Supreme Court of the District of Columbia. *Capital Traction Co.* v. *Hof* (1899, 19 S. Ct. 580, 174 U.S. 1, 43 L. Ed. 873).

3. Justices of the peace

Justices of the peace in the District were judicial officers, and held their office for five years. They were authorized to hold courts, and have cognizance of personal demands of value of $20. *Marbury* v. *Madison* (1803, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60).

Historical survey of justice of the peace courts. *Capital Traction Co.* v. *Hof* (1899, 19 S. Ct. 580, 174 U.S. 1, 43 L. Ed. 873).

Organic Act of February 27, 1801, 2 Stat. 103, ch. 15, § 11, provided for justices of the peace and fixed the compensation which they were to have for their services in holding their courts. This compensation was given in the form of fees, payable when the services were rendered. That the justice's compensation could not be diminished during his continuance in office, seemed to follow as a necessary consequence from the provisions of the Constitution. *O'Malley* v. *Woodrough* (1939, 59 S. Ct. 838, 307 U.S. 277, 83 L. Ed. 1289, 122 A.L.R. 1379).

4. Municipal court

The municipal court is a part of the judicial system of the District. *Moses* v. *Hayes* (36 App. D.C. 194).

5. Terms

Under the terms of the act establishing the Supreme Court of the District, the court consisted of four justices any three of whom could hold a general term, and any one of whom could hold a Circuit Court or special term for the purposes and under the conditions therein prescribed, or could hold a District Court of the United States in the same manner and with the same powers and jurisdiction as are possessed and exercised by the Federal District Courts within the several States. *Smith* v. *Mason* (1871, 81 U.S. 419, 14 Wall. 419, 20 L. Ed. 748).

Chapter 3.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

Sec.
11–301. Deputy clerks signing for clerk—authentication.
11–302. Reporter—General duties.

SUBCHAPTER II.—JURISDICTION

11–321. Appellate jurisdiction.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11–341. Distribution of reports—Sale.

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

§ 11–301. Deputy clerks signing for clerk—Authentication.

The deputy clerks for the United States Court of Appeals for the District of Columbia Circuit may sign the name of the clerk of the court to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate his signature by affixing the seal of the court thereto when the impress of the seal is necessary to its authentication. In such a case the signature shall be—

———— ————, Clerk.

By ———— ————, Deputy Clerk.

(Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–204 (Feb. 9, 1963, ch. 74, § 4, 27 Stat. 435; July 30, 1894, ch. 172, § 1, 28 Stat. 160; Mar. 3, 1901, ch. 854, § 224, 31 Stat. 1224; June 30, 1902, ch. 1329, 32 Stat. 528; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 21, 1928, ch. 659, 45 Stat. 645; June 25, 1948, ch. 646, § 15, 62 Stat. 988; May 24, 1949, ch. 139, § 137, 63 Stat. 108).

Word "Circuit" is added to state the full name of the United States Court of Appeals. See revision note under section 11–101.

Minor changes are made in phraseology.

CROSS REFERENCE

Appointment of clerks, criers, bailiffs and messengers, see U.S. Code, Title 28, §§ 711—713.

§ 11–302. Reporter—General duties.

The United States Court of Appeals for the District of Columbia Circuit may appoint a reporter, who shall serve during the pleasure of the court, and who shall report, edit, and publish the court's opinions, in a form prescribed by it. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–206 (Feb. 9, 1963, ch. 74, § 10, 27 Stat. 436; July 30, 1894, ch. 172, § 3, 28 Stat. 162; Mar. 3, 1901, ch. 854, § 229, 31 Stat 1226; July 1, 1902, ch. 1352, 32 Stat. 609; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 24, 1949, ch. 139, § 138, 63 Stat. 109).

Section is taken, with minor changes in phraseology, from first paragraph of section 11–206 of D.C. Code, 1961 ed. Remainder of section 11–206 is carried into section 11–341 herein.

Word "Circuit" is added to state the full name of the United States Court of Appeals. See revision note under section 11–101.

Other provisions relating to officers and employees of the United States courts of appeals, of the judges thereof, and of federal courts generally, are set out in Title 28 U.S.C. §§ 711 et seq., 951 et seq.

SUBCHAPTER II.—JURISDICTION

§ 11–321. Appellate jurisdiction.

(a) In addition to its jurisdiction otherwise conferred by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals, including judgments of that court rendered on review of orders and decisions of the administrative agencies of the District of Columbia specified by section 11–742(a).

(b) A party aggrieved by a judgment of the District of Columbia Court of Appeals may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit by petition for the allowance of an appeal. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Subsec. (a) is new in form, but does not make any new law, considering the provisions carried into subsec. (b). The latter provisions represent a consolidation of the last sentence of subsec. (f) of section 11–772 of D.C. Code, 1961 ed., which authorized aggrieved parties to seek reviews in the United States Court of Appeals, in the manner provided by section 11–773 thereof, of judgments in the Municipal Court of Appeals (now, District of Columbia Court of Appeals) on appeals from certain administrative orders and decisions; and the first sentence of section 11–773, which contained the general provision authorizing aggrieved parties to seek reviews in the United States Court of Appeals. The single, consolidated provision, as set out in subsec. (b) of this section, is couched in general terms and applies to all judgments of the District of Columbia Court of Appeals, whether entered in connection with an appeal from an order of decision of an administrative agency or otherwise. Actually, it follows the language of the first sentence of section 11–733 of D.C. Code, 1961 ed.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of sections 11–772 and 11–773 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Ambiguous pleading 1
Dismissal 2

1. Ambiguous pleading

Where buyer's complaint, whereby buyer sought damages for fraudulent representations in an amount within Municipal Court's jurisdiction, was ambiguous in that it did not clearly disclose whether rescission was sought or damages after rescission, and seller did not raise jurisdictional question in Municipal Court and Municipal Court considered only the damage claim, the action was within Municipal Court's jurisdiction, notwithstanding that the amount involved in a rescission action would have been in excess of jurisdictional amount. *Whelan* v. *Hirshon* (1956, 232 F. 2d 339, 98 U.S. App. D.C. 82).

2. Dismissal

Where plaintiffs appealed to Municipal Court of Appeals from order denying motion for clarification of order dismissing their action for want of prosecution and, after affirmance petitioned United States Court of Appeals for allowance of appeal on question of whether a dismissal for nonappearance in municipal court is with or without prejudice, dismissal of petition for appeal was required, since only question involved in case was right to clarification of order of dismissal. *Taylor* v. *Yellow Cab Co. of D.C.* (1948, 169 F. 2d 299, 83 U.S. App. D.C. 399).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11–341. Distribution of reports—Sale.

(a) The reporter of the United States Court of Appeals for the District of Columbia Circuit shall furnish and deliver one copy of each volume of the reports of the opinions of the court, immediately after publication, to each judge of the following courts in the District:

(1) The United States Court of Appeals;

(2) The United States District Court;

(3) The District of Columbia Court of Appeals;

(4) The Court of General Sessions;

(5) The Juvenile Court; and

(6) The Tax Court of the United States.

and the copies so received by each judge shall, upon his death, resignation, retirement, or removal from office, be delivered to his successor.

(b) The court shall approve the sale price for the reports of its opinions at not more than $6.50 per volume. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–206, 11–207, 11–751a (Feb. 9, 1893, ch. 74, § 10, 27 Stat. 436; July 30, 1894, ch. 172, § 3, 28 Stat. 162; Mar. 3, 1901, ch. 854, § 229, 31 Stat. 1226; July 1, 1902, ch. 1352, 32 Stat. 609; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Feb. 25, 1929, ch. 314, 45 Stat. 1287; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804,

49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, §§ 127, 138, 63 Stat. 107, 109; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates second paragraph of section 11–206 with section 11–207 of D.C. Code, 1961 ed., and with section 11–751a thereof which changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions. Section 11–751a is also shown as consolidated with a number of other sections carried into this revised part, to indicate the basis for substituting the new court designation.

In subsec. (a), references to the District of Columbia Court of Appeals, the Juvenile Court, and the Tax Court of the United States are inserted for completeness.

Also in subsec. (a), "retirement," is inserted after "resignation," to render more complete the provisions relating to delivery of the volumes to successors.

The provisions of section 11–207 of D.C. Code, 1961 ed., were derived from a provision of the District of Columbia Appropriation Act for 1930 (act Feb. 25, 1929, ch. 314, cited above), relating to the price, per volume, of the court's reports, and were repeated in the District of Columbia Appropriation Act for 1933 (ch. 308, 47 Stat. 368), and other District of Columbia appropriation acts down to and including act Aug. 9, 1939, ch. 633, § 1, 53 Stat. 1309. The same provision, commencing with 1940, appears in the Judiciary Appropriation Acts rather than in the District of Columbia Appropriation Acts. See, for example, act May 14, 1940, ch. 189, title IV, 54 Stat. 207 (210), and subsequent Judiciary Appropriation Acts down to and including act Oct. 18, 1962, Pub. L. 87–843, title IV, § 403, 76 Stat. 1100. In view of the repetition of the provision in annual appropriation acts for such a long period of time, this section (subsec. (b)) makes the provision permanent.

Changes are made in phraseology and arrangement.

Remainder of section 206 of D.C. Code, 1961 ed., is carried into section 11–302 herein.

Chapter 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

Sec.
11–501. Appointment of auditor, messengers, and other officers.
11–502. Duties of deputy clerks.
11–503. Secretarial and clerical assistants for United States Commissioners—Expenses.
11–504. Register of Wills—Oath—Bond—Clerk of Probate Court.
11–505. Powers and duties of Register of Wills—Restrictions—Penalties.
11–506. Deputies and other employees under Register of Wills—Duties.

SUBCHAPTER II.—JURISDICTION

11–521. Civil and criminal jurisdiction.
11–522. Probate and guardianship jurisdiction.
11–523. Concurrent jurisdiction of desertion and nonsupport cases.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11–541. Seal of Probate Court.

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

§ 11–501. Appointment of auditor, messengers, and other officers.

The United States District Court for the District of Columbia may appoint an auditor for the court, a messenger for each judge, and all officers of the court necessary for the due administration of justice. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–312 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 65, 31 Stat. 1200; June 30, 1902, ch. 1329, 32 Stat. 522; Apr. 19, 1920, ch. 153, 41 Stat. 455; Apr. 3, 1926, ch. 103, 44 Stat. 234; June 25, 1936, ch. 804, 49 Stat. 1921; May 24, 1949, ch. 139, § 136, 63 Stat. 108).

Changes are made in phraseology.

CROSS REFERENCE

Appointments of clerks, law clerks, etc., see U.S. Code, Title 28, § 751 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Annual account of fiduciaries 1
Appointments 2
Reference, rules of 3

1. Annual account of fiduciaries

Where will creating trust and naming trustee did not require trustee to account to court, mere appointment of substitute trustee and his choosing to ask court's instruction in regard to a particular matter did not bring trustee within court rule requiring fiduciary administering estate under "supervision" of court to file annual account and report. *Smithson* v. *Callahan* (1944, 141 F. 2d 13, 78 U.S. App. D.C. 355).

Under rule requiring fiduciary administering an estate under "supervision" of court to file annual account and report, quoted word implies more than power in court to intervene, in its discretion, in order to prevent or redress improper action by trustee and implies a duty in trustee to consult court before taking action. *Id.*

2. Appointments

Appointment of elisor unauthorized, without showing disqualification of marshal or coroner. *Doherty* v. *Kalmbach* (1937, 87 F. 2d 539, 66 App. D.C. 322).

3. Reference, rules of

District Court rule providing for domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child or question of amount of temporary maintenance for a wife or child and providing that when no objections are filed to report, court shall have authority to act on report without hearing, provides a convenient method by which facts may be secured and presented in interlocutory matters when both parties consent to its use, and rule is not invalid or beyond court's power to adopt. *Brown* v. *Brown* (1942, 134 F. 2d 505, 77 U.S. App. D.C. 73).

Where under District Court rule providing for domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child, father who had instituted suit for custody of child had full power to prevent application of rule to him by objecting to commissioner's report, the father was not entitled to an order that his motion for amendment of pendente lite custody order be not referred to the commissioner for investigation and report. *Id.*

The purpose of the District Court rule providing for a domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child or question of amount of temporary maintenance for wife or child and to make report and recommendation in such matters is not to deprive party of opportunity to present such evidence as he wishes to offer in the usual manner and the rule does not make the report evidence or admissible in evidence. *Id.*

§ 11–502. Duties of deputy clerks.

The clerk of the United States District Court for the District of Columbia may designate deputy clerks to perform his duties in his name, who may sign his name to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate the signature by

affixing the seal of the court thereto when the seal is necessary to its authentication. In such a case the signature shall be—

————— ————, Clerk.

By ————— ————, Deputy Clerk.

(Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–401 (Mar. 3, 1963, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 174, 31 Stat. 1218; June 30, 1902, ch. 1329, 32 Stat. 527; Dec. 15, 1941, ch. 574, § 1, 55 Stat. 801; June 25, 1948, ch. 646, § 14, 62 Stat. 988).

The first sentence of section 11–401 of D.C. Code, 1961 ed., provided as follows: "The clerk of the United States District Court for the District of Columbia may assign any of the deputy clerks in his office to duty in the general or special terms of the court, except the probate term". This sentence is omitted, and in its place and in place of the words at the beginning of the second sentence: "Any of the duties of the clerk may be performed in his name by any of the deputy clerks". The words "The clerk of the United States District of Columbia may designate deputy clerks to perform his duties in his name" are inserted at the beginning of the second sentence. Under prior law, the District Court had a general term for the transaction of business (but not for the hearing of causes), and special terms for the hearing of causes, which were designated, respectively, as the circuit court, equity court, criminal court, probate court, and district court. These statutory distinctions were repealed subsequent to the enactment, in 1948, of Title 28, United States Code, under which the District of Columbia was made a judicial district (28 U.S.C. § 88). Most of the provisions in that title relating to district courts embrace the United States District Court for the District of Columbia (28 U.S.C. §§ 132, 451). Sections 137—141 thereof govern the division of business and terms of district courts. Under section 138, each court, by rule, fixes the times for holding its regular terms, and section 141 provides in part that special terms, pursuant to court rules approved by the judicial council of the circuit, may be held upon such notice as the court orders, and that any business may be transacted at a special term which might be transacted at a regular term.

The Register of Wills serves as clerk of the court in matters relating to probate, the administration of estates, and guardianship, hence it is not necessary to retain the exception in the above-quoted sentence, or a similar one, with respect to probate, as the section, as revised, is still restricted to assignment only of duties of the regular clerk, and he apparently has no duties in the matters referred to.

Changes are made in phraseology.

For additional powers and duties of district court clerks and deputies, see Title 28, U.S.C., §§ 751, 956.

CROSS REFERENCE

Appointment of deputy clerks, clerical assistants, etc., see U.S. Code, Title 28, § 751.

§ 11–503. Secretrial and clerical assistants for United States Commissioners—Expenses.

Each United States commissioner for the District may employ secretarial and clerical assistants in such number and incur such other expenses as the District Court considers necessary. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–332 (June 29, 1953, ch. 159, § 403, 67 Stat. 102).

§ 11–504. Register of Wills—Oath—Bond—Clerk of Probate Court.

(a) The United States District Court for the District of Columbia shall appoint, and may remove, a Register of Wills, who shall take an oath for the faithful and impartial discharge of the duties of his office. The office of the Register of Wills is a part of the District Court, and chapter 41 of Title 28, United States Code, applies thereto.

(b) The Register of Wills shall give bond, with two or more sureties, to be approved by the chief judge of the court, in the sum of $5,000:

(1) faithfully to discharge the duties of his office; and

(2) seasonably to record (A) the decrees and orders of the court in any of the matters over which the court exercises its jurisdiction or powers as the Probate Court, (B) all wills proved before him or the court, and (C) all other matters directed to be recorded in the court or in his office.

The bond shall be entered in full upon the minutes of the court, and the original filed with the records thereof.

(c) The Register of Wills shall:

(1) act as clerk of the court in all matters over which the court exercises its jurisdiction or powers as the Probate Court;

(2) keep and certify the court's records in those matters; and

(3) generally, with respect to those matters, exercise the powers and perform the duties that might otherwise properly be exercised or performed by the regular clerk of the court.

(Dec. 23, 1963, 77 Stat. 481, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19–401, 19–402, 19–409 (R.S.D.C. §§ 929, 930; Mar. 3, 1901, ch. 854, §§ 116, 120, 31 Stat. 1208, 1209; Aug. 2, 1949, ch. 383, § 3, 63 Stat. 491, and Act Aug. 2, 1949, ch. 383, §§ 1, 4, 63 Stat. 491; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates sections 19–401, 19–402, and 19–409 of D.C. Code, 1961 ed., with that part of section 1 of act of Aug. 2, 1949, ch. 383, 63 Stat. 491, which, for budgetary and administrative purposes, transferred the office of the Register of Wills from the government of the District of Columbia to the Administrative Office of the United States Courts (although in this revised section the transfer provisions are omitted, as executed), and made chapter 41 of Title 28, United States Code, applicable thereto, and section 4 of the 1949 act, that provided that the office of the Register of Wills should be a part of the District Court.

In subsec. (b)(2), words "of the court in any matters over which the Court exercises its jurisdiction or powers as the Probate Court" are substituted for words in section 19–402 of the D.C. Code, 1961 ed., "of the judge of the District Court holding the special term for probate court business for the District"; and in subsec. (c)(1), words "act as clerk of the court in all matters over which the Court exercises its jurisdiction or powers as the Probate Court" are substituted for words in section 19–409 of the D.C. Code, 1951 ed., "act as clerk of the said probate term". See revision note under section 11–502 herein.

Changes are made in phraseology and arrangement.

§ 11–505. Powers and duties of Register of Wills—Restrictions—Penalties.

(a) The Register of Wills may:

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval by the court;

(2) take the probate of claims against the estates of deceased persons that are properly

brought before him, and approve or reject claims not exceeding $300; and

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval by the court.

(b) In matters over which the court has jurisdiction or exercises powers as the Probate Court, the Register of Wills shall:

(1) make full and fair entries of the proceedings of the court;

(2) make a fair record in a strong-bound book of all wills proved before him or the court, and of other matters required by law to be recorded in the court;

(3) lodge original papers filed with him in a place of safety appointed by the court;

(4) make out and issue every summons, process, and order of the court;

(5) make fair tables of his fees, and post them in a conspicuous place in his office for the inspection of persons having business therein;

(6) in every respect, act under the control and direction of the court; and

(7) pay into the treasury all fees, costs, and other moneys collected by him, except uncollected fees not required by law to be prepaid, and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by the Director.

(c) The Register of Wills may not:

(1) practice law in any court of the District or of the United States; or

(2) demand or receive any fee, gratuity, gift, or reward, for giving his advice in any matter relating to his office.

(d) The Register of Wills shall forfeit the sum of $10 for each day that the tables referred to in clause (5) of subsection (b) of this section are missing through his neglect, which may be recovered as other debts for the same amount are recoverable. Of the amount so paid or recovered, one-half shall be for the use of the District, and one-half shall be for the use of the informer.

(e) If the Register of Wills or a person acting for him takes a greater fee than the fee provided for by law, he shall pay to the party injured $50, which may be recovered as other debts for the same amount are recoverable. (Dec. 23, 1963, 77 Stat. 481, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 19–403, 19–404a, 19–406, 19–407, 19–408, 19–410, 19–411 (Maryland Act, 1779, ch. 25; Maryland Act 1781, ch. 16; Maryland Act 1786, ch. 10; Apr. 2, 1792, ch. 16, § 9, 1 Stat. 248; R.S.D.C. §§ 933–935; Mar. 3, 1901, ch. 854, § 121, 31 Stat. 1209; June 30, 1902, ch. 1329, 32 Stat. 525; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Apr. 24, 1926, ch. 176, 44 Stat. 322; Aug. 7, 1946, ch. 792, 60 Stat. 889; Aug. 2, 1949, ch. 383, § 5, 63 Stat. 491).

Section consolidates part of section 19–403 of D.C. Code, 1961 ed., with sections 19–404a, 19–406, 19–407, 19–408, 19–410 and 19–411 thereof. For remainder of section 19–403, see section 11–506 herein.

Sections 19–410 and 19–411 of D.C. Code, 1961 ed., which were derived from the old Maryland statutes and the Act of Congress Apr. 2, 1792, ch. 16, § 9, 1 Stat. 248, cited above, provided:

Section 19–410:

"No person, being register of wills shall plead as an attorney at law in any court in the District of Columbia for any person or persons, on any pretence whatsoever; and no register of wills as aforesaid shall exact, extort, demand, take, accept, or receive, from any person whatsoever, any fee or fees, gratuity, gift, or reward, for giving his advice in any matter or thing that will be transacted in the courts of the District of Columbia, under the penalty of $80, current money for every such offense".

Section 19–411:

"The register of wills shall not demand, take, or receive, from any person whatever any fee, gratuity, gift or reward, for giving his advice in any matter or thing relative to his office, under the penalty of $133.33, for every offense.".

The restrictions imposed in the two sections quoted above are consolidated and preserved in subsec. (c) of this revised section but the penalties are omitted as inconsistent with each other, obsolete, or in any event unnecessary. The Register of Wills is now an officer of the District Court, and subject not only to its direction and control, but also to removal by the court, in its discretion, for misconduct or any other reason. See section 11–504 herein. See, also, section 401(2) of Title 18, United States Code, under which courts of the United States may punish such contempt of their authority as misbehavior of any of their officers in their official transactions.

Words "exact", "extort", "take", and "accept" are omitted from clause (2) of subsec. (c) of this section as covered by "demand" and "receive", as the case may be; and, in subsec. (e) reference to "forfeit" is omitted as covered by "pay".

Changes are made in phraseology.

§ 11–506. Deputies and other employees under Register of Wills—Duties.

(a) The Register of Wills, with the approval of the court, may appoint necessary deputies, clerical assistants and other employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. With the approval of the court, the Register of Wills may remove any of the personnel so appointed.

(b) The personnel appointed pursuant to this section shall be under the supervision and control of the Register of Wills, and shall perform such duties as he or the court directs. The deputies may perform acts necessary in the administration of the office of the Register of Wills and the certification of the records of the court which the Register may perform. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 19–403 (Mar. 3, 1901, ch. 854, § 121, 31 Stat. 1209; June 30, 1902, ch. 1329, 32 Stat. 525; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Apr. 24, 1926, ch. 176, 44 Stat. 322; Aug. 7, 1946, ch. 792, 60 Stat. 889).

Section is derived from that part of section 19–403 of D.C. Code, 1961 ed., which related to the appointment of deputies and other personnel in the office of the Register of Wills.

Section 19–403 of D.C. Code, 1961 ed., authorized the Register of Wills to appoint five deputies, and to appoint and fix the number of compensation of the employees of the "said probate court" (which was the designation of a former statutory special term of the District Court) and the office of the Register, and contained a proviso that "the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills". However, the Register of Wills is now an officer of the District Court, is appointed by that court, and the provisions of chapter 41 (section 601 et seq.) of Title 28, United States Code, apply to his office (see section 11–504 herein, and revision note there-

under). Chapter 41 of Title 28, United States Code, relates to the Administrative Office of the United States Courts, and section 601(a)(5) thereof provides that the Director of the Administrative Office shall fix the compensation of "clerks of court, deputies * * * [etc.] and other employees of the courts whose compensation is not otherwise fixed by law". Further, under section 751 of Title 28, United States Code, the regular clerk of the District Court appoints, with the approval of the court, necessary deputies (with no statutory restriction on the number, presumably because of the necessity for the court's approval), clerical assistants, "and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts". Section 751 of that title also provides that the clerk may remove such deputies and other employees, with the approval of the court. That section, as stated, relates to the regular clerks of the district courts, and it does not apply to the Register of Wills, but, in view of the changed status of the office of the Register of Wills (since 1949), and the functions, under section 601 of Title 28, United States Code, of the Director of the Administrative Office, with respect to the office of the Register, it would seem that provisions similar to those of section 751 of Title 28, United States Code, relating to regular district court clerks, should apply to the Register and the deputies and other employees in his office. Therefore, the provisions of section 19–403 as herein revised, place no restriction on the number of deputies to be appointed, but make the appointments subject to approval of the court; omit the proviso prohibiting the appointment of other employees in a number in excess of the number actually necessary, and provide for approval of the number by the Director of the Administrative Office; omit the provisions which related to the fixing, by the Register, of the compensation of the employees; and provide, for the purpose of completeness, that the personnel appointed under this section shall be under the supervision and control of the Register of Wills, and shall perform such duties as he or the court directs. The section also inserts the provision that, with the approval of the court, the Register may remove any of the personnel so appointed.

Changes are made in phraseology.

For remainder of section 19–403 of D.C. Code, 1961 ed., see section 11–505 herein.

SUBCHAPTER II.—JURISDICTION

§ 11–521. Civil and criminal jurisdiction.

(a) Except in actions or proceedings over which exclusive jurisdiction is conferred by law upon other courts in the District, the United States District Court for the District of Columbia, in addition to its jurisdiction as a United States district court and to any other jurisdiction conferred by law, has all the jurisdiction possessed and exercised by it on January 1, 1964, and has original jurisdiction of all:

(1) civil actions between parties, where either or both of them are resident or found within the District; and

(2) offenses committed within the District.

(b) Except as otherwise specially provided, an action may not be brought in the District Court by original process against a person who is not resident or found within the District. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–305, 11–306, 11–308 (R.S.D.C. §§ 763, 767; Feb. 27, 1877, ch. 69, § 2, 19 Stat. 253; Mar. 3, 1901, ch. 854, §61, 31 Stat. 1199; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 135, 63 Stat. 108).

Section consolidates sections 11–305, 11–306, and 11–308 of D.C. Code, 1961 ed.

In subsec. (a), words "September 1, 1963" are substituted for "August 31, 1948," to reflect the date on which this revised title will become effective.

The exception clause is inserted at the beginning of subsec. (a) for the purpose of clarity and completeness.

To conform more closely with modern usage, "original jurisdiction" is substituted for "cognizance"; and "offenses" is substituted for "crimes and offenses". See Title 28, U.S.C., §§ 1331, 1332; Title 18, U.S.C., §§ 1, 3231.

Also with respect to terms and phrases used in section 11–306 of D.C. Code, 1961 ed., in this section as revised, "civil actions" is substituted for "cases in law and equity", as the former term is all inclusive. The Federal Rules of Civil Procedure apply in the United States District Court for the District of Columbia (since it is a United States district court; see Rule 1 thereof, and Title 28, U.S.C., §§ 88, 132, 133), and Rule 2 thereof provides for only one form of action in such courts, to be known as a "civil action".

The following provisions of section 11–306 of D.C. Code, 1961 ed., are omitted as covered by provisions in Title 28, U.S.C. (see § 1331 et seq. thereof): "and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States".

Changes are made in phraseology.

Cross References

Appeal from action of Board of Education in revoking license of institution of learning, see § 29–417.

Appointment of Board of Education, see § 31–101.

Appointment of jury commissioners, see § 11–2303.

Appointment of trustee for benefit of creditors, see § 28–2604.

Condemnation of land for minor streets and alleys, see § 7–313.

Condemnation of land for permanent highways, see § 7–202.

Designation of officer to take bonds and collateral, see § 23–610.

Determination of terms and conditions of joint use of certain railroad facilities, see § 7–1213.

Elections, petition for recount, see § 1–1111.

Enforcement of lien for cost of constructing Benning Bridge, see § 7–514.

Enforcement of lien for cost of constructing Michigan Avenue Viaduct, see § 7–520.

Enforcement of lien for cost of subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, see § 7–523.

Enforcement of lien to recover part of cost of construction of viaducts and subways, see § 7–1215.

Enjoining unlawful operation of medical and dental colleges, see § 31–904.

Jurisdiction over trust for burial grounds, see § 27–113

Probation system, see § 24–101 et seq.

Procedings to close public highways under Street Adjustment Act, see § 7–405.

Review of action of Nurses' Examining Board in refusing to register or reregister nurse, see § 2–407.

Revocation or suspension of dental licenses, see §§ 2–311, 2–312.

Revocation or suspension of license of dental hygienists, see § 2–325.

Revocation or suspension of license of podiatrist, see §§ 2–707, 2–708.

Revocation or suspension of nurse's registration, see § 2–407.

Revocation or suspension of physician's license, see § 2–123.

Violations of laws concerning Capitol building, grounds, and terraces, see § 9–125.

Jurisdiction of U.S. District Courts, see U.S. Code, Title 28, § 1331 et seq.

Venue of proceedings in U.S. District Courts, see U.S. Code, Title 28, § 1391 et seq.

Jurisdiction in Certain Domestic Relations Matters

Section 16 of act, Dec. 23, 1963, provided as follows: "Chapter 11 of Title 11 of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], does not divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in

any action, application, or proceeding, as described in section 11–1141 of the Code, filed in the District Court prior to the effective date of section 105 of the Act of April 11, 1956 (ch. 204, 70 Stat. 112), to the same extent as if chapter 11 had not been enacted."

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1. In general

By this section the justices of the Supreme Court of the District (District Court of the United States for the District of Columbia) were vested with the power and jurisdiction of judges of the District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (1927, 47 S. Ct. 557, 274 U.S. 145, 71 L. Ed. 972).

The fact that District Court for District of Columbia was known as the "Supreme Court of the District of Columbia", when act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938, amending 28 U.S.C. § 345 and restricting direct review by Supreme Court of District Court judgments became law, did not exclude the District Court for District of Columbia from such restriction, since at that time the Supreme Court of District of Columbia possessed the jurisdiction of a District Court of the United States. *U.S.* v. *Belt* (1943, 63 S. Ct. 1278, 319 U.S. 521, 87 L. Ed. 1559).

2. Actions against United States

In suit by stockholders of steamship company against members of Maritime Commission to recover stock delivered to Commission under contract providing aid for company, on ground that Commission was unauthorized to acquire shares outright and that, in any event, contract resulted in no more than a pledge of shares, determination of whether suit was one against United States over which District Court would have no jurisdiction depended upon decision on merits, and District Court had jurisdiction to determine its jurisdiction by proceeding to a decision on the merits. *Land* v. *Dollar* (1947, 67 S. Ct. 1009, 330 U.S. 731, 91 L. Ed. 1209).

3. Alien Property Custodian

50 U.S.C. App. § 35(b) providing that in time of war property of any foreign country or national thereof shall vest as directed by the President and seizure of a friendly alien's property by Alien Property Custodian, pursuant to President's directive, did not nullify 50 U.S.C. App. § 9 (a) providing that any person not an enemy or ally thereof claiming any property transferred to Alien Property Custodian might institute suit in District Court to obtain possession thereof. *Uebersee Finanz-Korporation, A. G.* v. *Markham* (1947, 158 F. 2d 313, 81 U.S. App. D.C. 284, affirmed 68 S. Ct. 174, 332 U.S. 480, 92 L. Ed. 88).

4. Amount in controversy

In determining if value of matter in controversy in a case is sufficient for jurisdictional requirements of federal court, absolute certainty as to value is not essential, and present probability that damages will exceed the sum is enough. *Friedman* v. *International Association of Machinists* (1955, 220 F. 2d 808, 95 U.S. App. D.C. 128, certiorari denied 76 S. Ct. 51, 350 U.S. 824, 100 L. Ed. 736).

If matter in controversy in a case exceeds the value of $3,000, exclusive of interest and costs, the jurisdictional requirements of the Judicial Code and the District of Columbia Code are satisfied insofar as the amount involved is concerned. *Id.*

District Court for District of Columbia did not have jurisdiction of action to have trust impressed on funds amounting to $1,980 or, in alternative, for money judgment, regardless of whether complaint would have formerly been denoted a suit at law or a bill in equity, in view of § 11–755 giving Municipal Court exclusive jurisdiction of "civil actions" involving "personal property" having value less than $3,000. *Klepinger* v. *Rhodes* (1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, certiorari denied 64 S. Ct. 1047, 322 U.S. 734, 88 L. Ed. 1568).

5. Back pay of Federal employee

The District Court was without jurisdiction to award judgment for back pay to employee in the Immigration and Naturalization Service of the Department of Justice who had been dismissed as a probationary employee without notice. *Borak* v. *Biddle* (1944, 141 F. 2d 278, 78 U.S. App. D.C. 374, certiorari denied 65 S. Ct. 42, 323 U.S. 738, 89 L. Ed. 591).

6. Conspiracy

Supreme Court has jurisdiction to try conspiracy entered into the District of Columbia, although the overt act is shown to have been committed in another jurisdiction or even in a foreign country. *Hyde* v. *Shine* (1905, 25 S. Ct. 760, 199 U.S. 62, 50 L. Ed. 90).

Conspiracy to commit offense against the United States is triable in the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), sitting as a criminal court. *Pitts* v. *Peak* (1931, 50 F. 2d 485, 60 App. D.C. 195).

Charge of conspiracy against the United States is triable before Supreme Court of District sitting as a criminal court. *Pitts* v. *Peak* (1931, 50 F. 2d 485, 60 App. D.C. 195).

7. Costs, laws relating to

Section 815 of title 28, U.S.C., disallowing costs to plaintiff recovering less than $500 in action brought in District Court of United States where jurisdictional amount exceeds such sum is applicable to District Court of the United States for the District of Columbia. *Silverman* v. *Central Amusement Co.* (1943, 49 F. Supp. 364).

8. "Court of the United States"

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) is a "court of the United States." *Benson* v. *Henkel* (1905, 25 S. Ct. 569, 198 U.S. 1, 49 L. Ed. 919). See, also, *O'Donoghue* v. *United States* (1933, 53 S. Ct. 740, 289 U.S. 516, 77 L. Ed. 1356).

The Supreme Court of the District of Columbia has power to punish for contempt of court. *Moss* v. *United States* (23 App. D.C. 475).

9. Criminal Appeals Act

This section does not constitute the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) a District Court for the purposes of the Criminal Appeals Act. *United States* v. *Burroughs* (1933, 53 S. Ct. 574, 289 U.S. 159, 77 L. Ed. 1096).

10. Declaratory judgment

Heirs of a putative husband may utilize declaratory judgment technique to attack validity of foreign divorce decree of person claiming to be wife of putative husband. *Gordon et al.* v. *Matthews* (1959, 273 F. 2d 525, 106 U.S. App. D.C. 400).

When confronted with a request for declaratory relief more properly amenable to disposition in another forum, court has broad measure of discretion whether to grant prayer and it may decline to entertain the action. *Id.*

11. Discretion

The Court of Appeals has jurisdiction to review matters resting in the discretion of the trial justices. *Billings* v. *Field* (36 App. D.C. 16). See, also, *Degge* v. *Hitchcock* (35 App. D.C. 218, affirmed 33 S. Ct. 639, 229 U.S. 162, 57 L. Ed. 1135).

12. Dismissal

Suit will be dismissed where an indispensable party is not joined. *Mine Safety Appliances Co.* v. *Knox* (1945, 59 F. Supp. 733, affirmed 66 S. Ct. 219, 326 U.S. 371, 90 L. Ed. 694).

13. Enforcement of Sherman Law

This section is plain and unambiguous, and transfers to the District Courts all the jurisdiction and power that the Circuit Courts had with regard to the enforcement of the Sherman Law. *Wogan Bros., Inc.* v. *American Sugar Ref. Co.* (D.C. La. 1914, 215 F. 273).

14. Enjoining orders of Secretary of Agriculture

The general equity jurisdiction of the District Court for the District of Columbia authorized it to hear suit to enjoin the Secretary of Agriculture from enforcing allegedly illegal provisions of order dealing with marketing of milk in Greater Boston, Mass., area. *Stark* v. *Wickard* (1944, 64 S. Ct. 559, 321 U.S. 288, 88 L Ed. 733).

15. Emergency Price Control Act

50 U.S.C. App. § 924(d), The Emergency Price Control Act, confers exclusive jurisdiction on Emergency Court of Appeals to determine validity of any regulation or order issued under said sections and District Court of United States for District of Columbia was without jurisdiction of action for declaratory judgment that regulation of Price Administrator was invalid and to enjoin enforcement of regulation notwithstanding contention that Secretary of Agriculture, Price Administrator, and Director of Economic Stabilization conspired to avoid statutory standards for promulgation of orders affecting agricultural commodities. *Cooper* v. *Anderson* (1946, 156 F. 2d 564, 81 U.S. App. D.C. 166).

16. Exclusive jurisdiction

This section giving District Court of United States for District of Columbia jurisdiction of all civil actions brought by the United States, confers a privilege and does not impose a restriction on the United States, and, therefore, the District Court does not have exclusive jurisdiction of actions brought by the United States in the District of Columbia. *Ridgley* v. *U.S.* (D.C. Mun. App. 1946, 45 A. 2d 475).

17. Foreign agents

In proceeding in the United States District Court for District of Columbia by a foreign power to compel its agents in the United States to turn over funds and records in their hands to another agency of such power where power was represented in the jurisdiction by its ambassador who instituted the suit and defendants were residents of the jurisdiction and had made a general appearance through their attorney, court had jurisdiction over the parties. *Republic of China* v. *Pang-Tsu-Mow et al.* (1951, 101 F. Supp. 646).

18. Forum non conveniens

On record in action arising out of automobile collison occurring in Maryland, in which state all of parties and most of witnesses resided, it was not abuse of discretion for federal district court for District of Columbia, which knew that case could not be transferred to another federal court, to dismiss complaint on ground of forum non conveniens. *Gross et ano.* v. *Owen* (1955, 221 F. 2d 94, 95 U.S. App. D.C. 222).

19. Habeas Corpus

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), is without jurisdiction to inquire into the grounds of the detention of persons unlawfully restrained of their liberty beyond the District of Columbia. *McGowan* v. *Moody* (22 App. D.C. 148).

20. Historical

When Maryland railroad extended limits into District of Columbia, as the unity of the road was unchanged in name and locality, it was proper and allowed by act of Congress, and under 2 Stat. 103, ch. 15, § 6, the District court had jurisdiction for injuries done on said road although outside of the District. *Baltimore & O. R. Co.* v. *Harris* (1870, 79 U.S. 65, 12 Wall. 65, 20 L. Ed. 354).

The Supreme Court of the District of Columbia had the same powers and jurisdiction that had previously belonged to the Circuit Court which it superseded; and the appellate power of this court was declared to be the same as that which it had, by law, over the Circuit Court. *Baltimore & P. R. Co.* v. *Trustees of the Sixth Presbyterian Church* (1873, 86 U.S. 64, 19 Wall. 64, 22 L. Ed. 97).

Authority to issue writs of mandamus in cases in which the parties are by common law entitled to them was vested in the Supreme Court of the District of Columbia. *United States ex rel. McBride* v. *Schurz* (1880, 102 U.S. 378, 12 Otto 378, 26 L. Ed. 167).

Circuit Court of Appeals did not have jurisdiction of criminal cases in District of Columbia. *In re Health* (1892, 12 S. Ct. 615, 144 U.S. 92, 36 L. Ed. 358).

Act of February 6, 1889, did not authorize a writ of error from Circuit Court to the Supreme Court of the District to review a judgment in general term affirming a judgment of the trial court which convicted a person of a capital offense. *Cross* v. *United States* (1892, 12 S. Ct. 842, 145 U.S. 571, 36 L. Ed. 821).

16 Stat. 160, ch. 141, § 4, provided that the several general terms and special terms of the various courts, Circuit, District, and Criminal, should be considered terms of the Supreme Court of the District and that their judgments should be the judgments of the Supreme Court, but that this should not affect the right of appeal as provided by law. *Id.*

The Supreme Court had no jurisdiction to review on writ of error, a judgment of the Court of Appeals to the District in a criminal matter under § 8 of the act of February 9, 1893, ch. 74, 27 Stat. 434. *Chapman* v. *United States* (1896, 17 S. Ct. 76, 164 U.S. 436, 41 L. Ed. 504).

21. Judicial notice

Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) must take judicial notice of the laws of the States. *Moore* v. *Pywell* (29 App. D.C. 312, 9 L.R.A., N.S., 1078).

United States District Court for District of Columbia could not take judicial notice of municipal ordinance of the District of Columbia establishing speed limits. *Gardner* v. *Capital Transit Co.* (1946, 152 F. 2d 288, 80 U.S. App. D.C. 297, certiorari denied 66 S. Ct. 824, 327 U.S. 795, 90 L. Ed. 1021).

The district court of the United States for the District of Columbia will take judicial notice of the public statutes to a state. *Hicks* v. *Hicks* (1948, 80 F. Supp. 219).

22. Jurisdiction—District Court of the United States

By this section the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) was given the same powers and the same jurisdiction as District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (1927, 47 S. Ct. 557, 274 U.S. 145, 71 L. Ed. 972).

The Supreme Court of the District of Columbia (Distric Court of the United States for the District of Columbia) is a District Court within this section. *Claiborne-Annapolis Ferry Co.* v. *United States* (1937, 57 S. Ct. 440, 285 U.S. 382, 76 L. Ed. 808). See, also, *In re Macfarland* (30 App. D.C. 365, appeal dismissed 30 S. Ct. 402, 215 U.S. 614, 54 L. Ed. 349); *Moder* v. *United States* (1933, 64 F. 2d 703, 62 App. D.C. 65); *Ormsby* v. *United States* (C.C.A. 6, 1921, 273 F. 977).

The District Court of United States for District of Columbia has all the ordinary and usual jurisdiction of a state court in respect to matters which in a state would be exercised by a state court, and it has all jurisdiction and powers of United States District Court elsewhere. *King* v. *Wall & Beaver Street Corporation* (1944, 145 F. 2d 377, 79 U.S. App. D.C. 234).

23. —— Generally

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between

parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

An action by citizens of New Jersey against defendant, a foreign corporation doing business in the District of Columbia, for injuries sustained by plaintiff from a collision between a bus and truck in West Virginia was a transitory tort action as to which the District Court could take jurisdiction. *David Blake et al.* v. *Capitol Greyhound lines* (1955, 222 F. 2d 25, 95 U.S. App. D.C. 334).

In view of fact that suit against father for maintenance of children is a personal, transitory action, when father's residence was in District of Columbia, children were entitled to sue him therein, notwithstanding fact of their own residence in Virginia. *Scholla* v. *Scholla* (1953, 201 F. 2d 211, 92 U.S. App. D.C. 9).

Under section granting federal district court for District of Columbia cognizance of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, federal district court for District of Columbia possessed jurisdiction to grant relief in suit between aliens, where suit was brought in District and defendants submitted to process of court. *Pang-Tsu Mow* v. *Republic of China* (1952, 201 F. 2d 195, 91 U.S. App. D.C. 324, certiorari denied 73 S. Ct. 783, 345 U.S. 925, 97 L. Ed. 1356).

In a civil action brought by the United States to recover less than $3,000.00, the district court acquired jurisdiction and should have entertained the suit, since by this and previous statutes the United States has expressly conferred upon its district courts jurisdiction of its suits and the statutes have not limited this jurisdiction. *United States* v. *Kloman* (1949, 176 F. 2d 27, 85 U.S. App. D.C. 96).

Every United States District Court is court of general original jurisdiction in respect to cases and controversies arising within federal areas, or federal reservations, located geographically within district. *North Branch Products, Inc.* v. *Fisher* (1960, 179 F. Supp. 843).

24. —— Law governing

The District Court of United States for District of Columbia is both a federal district court governed by national legislation respecting venue, jurisdiction, and procedure, and a local trial court of general jurisdiction governed by local legislation embodied in this Code. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (1946, 155 F. 2d 864, 81 U.S. App. D.C. 124).

25. —— Limitation

Where the actual damages recoverable are within the exclusive jurisdiction of the Municipal Court, the District Court of the United States has no jurisdiction, and a mere ad damnum clause will not confer it. *Minick* v. *Associates Inv. Co.* (1940, 110 F. 2d 267, 71 App. D.C. 367).

Where maker, who had given deed of trust on automobile as security for note, alleged that transaction was fraudulent and usurious and that defendant had seized automobile on maker's default and maker demanded damages in an aggregate amount of $2,000, an order that defendants disclose the state of the account between the parties, and an injunction against the sale of the automobile, District Court for District of Columbia did not have jurisdiction of the action. *Rowe* v. *Nolan Finance Co.* (1944, 142 F. 2d 93, 79 U.S. App. D.C. 35).

26. —— Withholding of

The federal District Courts may in their discretion properly withhold the exercise of the jurisdiction conferred upon them where there is no lack of another suitable form. *Paley* v. *Solomon* (1945, 59 F. Supp. 887).

Where action by plaintiff against defendant was instituted in District Court for District of Columbia before defendant instituted action against plaintiff on same cause of action in federal District Court for Maryland, even though plaintiff filed counterclaim in Maryland action, when trial in Maryland resulted in hung jury, plaintiff had right to insist on trial of his case in District of Columbia. *Brooks Transp. Co.* v. *McCutcheon* (1946, 154 F. 2d 841, 80 U.S. App. D.C. 406).

27. Law governing

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over District of Columbia must be harmonized with constitutional definition of judicial power of United States, and so harmonized requires conclusion that when parts of Maryland and Virginia became originally incorporated within District of Columbia, the authority of Congress over the ceded area enabled it to clothe courts of District with jurisdiction like that left behind in Maryland and Virginia. *Pang-Tsu Mow* v. *Republic of China* (1952, 201 F. 2d 195, 91 U.S. App. D.C. 324, certiorari denied 73 S. Ct. 783, 345 U.S. 925, 97 L. Ed. 1356).

The District Court of United States for District of Columbia is both a federal district court governed by national legislation respecting venue, jurisdiction, and procedure, and a local trial court of general jurisdiction governed by local legislation embodied in this Code. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (1946, 155 F. 2d 864, 81 U.S. App. D.C. 124).

28. Local jurisdiction

Courts of District of Columbia have local jurisdiction precisely as though they were courts of one of states. *Western Urn Manufacturing Co et ano.* v. *American Pipe and Steel Corporation* (C.A.D.C. 1960, 284 F. 2d 279).

29. Maintenance actions

The "public policy" of the District of Columbia does not require its courts to take jurisdiction of a matrimonial dispute between two persons who are neither domiciled in the District nor even residents thereof, especially where there is no showing that the welfare of children, rights of property, or other public interests in the District are affected. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

Under the doctrine "forum non conveniens" the District Court's jurisdiction of actions for separate maintenance between nonresidents domiciled elsewhere should not be exercised unless unusual circumstances justify trial in the District of Columbia. *Id.*

The District Court properly accepted jurisdiction of a wife's action for separate maintenance, even though husband and wife were nonresidents domiciled outside the District of Columbia, where husband's work when not traveling was in the District and husband's domicile was uncertain, both parties lived a few miles away, and husband at one time lived in the District. *Id.*

30. Negligence

Statute providing that civil action wherein jurisdiction is founded only on diversity of citizenship may be brought only in judicial district where all plaintiffs or all defendants reside was not applicable to an action arising out of an automobile accident in the District of Columbia brought by a New York resident against servicemen who were stationed in Virginia, when action was not founded on diversity of citizenship but on general jurisdiction of United States District Court for the District of Columbia. *F. B. Boardman* v. *J. Martocchia et ano.* (1963, 216 F. Supp. 830).

The United States District Court for the District of Columbia has the jurisdiction of United States district courts generally and all the ordinary and usual jurisdiction of a state court. *Id.*

United States District Court for District of Columbia had jurisdiction of suit filed by New York resident against servicemen, who were stationed in Virginia and who were served pursuant to statute relating to service of process on nonresidents involved in automobile accident in the District of Columbia. *Id.*

Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) has jurdisdiction of action for negligence causing death where the act complained of was committed in the District, notwithstanding the fact that death occurred elsewhere. *Moore* v. *Pywell* (29 App. D.C. 312).

31. Personal liability for acts

Chief Justice and Associate Justice when affixing their signature to an order for disbarment act within scope of their official authority and within jurisdiction of the court and they are not liable for damages therefrom.

Fletcher v. *Wheat* (1939, 100 F. 2d 432, 69 App. D.C. 259, certiorari denied 59 S. Ct. 794, 307 U.S. 621, 83 L. Ed. 1500).

32. Probate proceedings

Action for declaration that plaintiffs were the surviving heirs and next of kind of decedent, whose marriage to defendant was allegedly invalid on ground that decree of divorce obtained by defendant from a prior husband in Virginia was obtained by fraud on a Virginia court, should have been brought in probate court. *Gordon et al.* v. *Matthews* (1959, 273 F. 2d 525, 106 U.S. App. D.C. 400).

33. Process, issuance of

Under this chapter covering jurisdiction of courts in District of Columbia, District Court of United States for District of Columbia may exercise jurisdiction if defendants are found within the District, but process from District Court may not issue or be served on any person not an inhabitant of or found within the District. *King* v. *Wall & Beaver Street Corporation* (1944, 145 F. 2d 377, 79 U.S. App. D.C. 23).

In derivative action by New York stockholders against Connecticut citizens who were temporarily living in District of Columbia, and Maryland corporation which had not transacted business in District of Columbia, jurisdiction of District Court of United States for District of Columbia could not be sustained by applying this chapter to jurisdictional question involving the Connecticut citizens and ignoring the restrictive provison precluding service of process on person not an inhabitant of or found within District, and by applying exception to 28 U.S.C. § 112, with relation to service of process on corporation and ignoring the restrictive provisions of 28 U.S.C. § 112, in relation to jurisdiction as to the individual defendants. *Id.*

34. Punish for contempt

An attorney while as a witness need not disclose the name of party for reason that he promised not to divulge his name, and he is not guilty of contempt of court, for this would require him to divulge a privileged communication. *Elliott* v. *United States* (23 App. D.C. 456).

35. Redemption of real property

The right to redeem Maryland land foreclosed in Maryland or to set aside or modify foreclosure decree could only be granted by Maryland court, and not by District of Columbia court. *Smith* v. *Schlein* (1944, 144 F. 2d 257, 79 U.S. App. D.C. 166).

36. Removal of prisoner to District

One properly indicted in the District of Columbia may be removed from a district in which he is found to the District of Columbia to await trial. *Benson* v. *Henkel* (1905, 25 S. Ct. 569, 198 U.S. 1, 49 L. Ed. 919).

37. Residents

Where, at time of filing of action and service of process defendants were actually but temporarily residing in District of Columbia and had actual citizenship in Connecticut where they maintained permanent home, the defendants were not "residents" of District of Columbia, within 28 U.S.C. § 112. *King* v. *Wall & Beaver Street Corporation* (1944, 145 F. 2d 377, 79 U.S. App. D.C. 234).

38. Safety Appliance Act

Circuit branch of Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) has jurisdiction to entertain suit for violation of safety appliance act. *United States* v. *Baltimore & O. R. Co.* (26 App. D.C. 581).

39. Seaman's action for injuries

Under this section, abolishing the Circuit Court, concurrent jurisdiction of seamen's action for personal injuries rested in the United States District Court and the state court. *Pitts* v. *Peak* (1931, 50 F. 2d 485, 60 App. D.C. 195). See, also, *Cook* v. *Alaska S. S. Co.* (D.C., Wash., 1881, 8 Fed. 2d 207).

40. Suit to restrain Federal Trade Commission

Court held to have jurisdiction of suit to restrain and set aside order of Federal Trade Commission, not proceeding under § 5, of the Federal Trade Commission Act (U.S.C., title 15, § 45), seeking to compel the officers of an unincorporated association to produce documents, where refusal to comply with the order will subject such officers to a criminal penalty under § 10 of the Federal Trade Commission Act (U.S.C., title 15, § 50), and will thus deprive them of their constitutional rights. *Federal Trade Comm.* v. *Millers Nat. Federation* (1928, 23 F. 2d 968, 57 App. D.C. 360).

41. Venue

District Court of District of Columbia has jurisdiction to entertain a suit for injunctive relief brought against the Brotherhood of Locomotive Firemen and Enginemen when service of process is legally perfected to enforce petitioners' rights to nondiscriminatory representation by their statutory representaives in collecive bargaining negotiations. *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen* (1949, 70 S. Ct. 14, 338 U.S. 232, 94 L. Ed. 1).

42. Writs tested by Chief Justice

Since the transfer of the Circuit Courts to the District Courts, writs from them may be properly tested by the Chief Justice. *Union Tool Co.* v. *Wilson* (1922, 42 S. Ct. 427, 259 U.S. 107, 66 L. Ed. 848).

§ 11–522. Probate and guardianship jurisdiction.

(a) The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870.

(b) In addition to the jurisdiction conferred by subsection (a) of this section, the District Court has full power and authority and plenary jurisdiction to:

(1) hear and determine questions relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and admit them to probate and record;

(2) take the proof of wills of either personal or real property and admit them to probate and record, and for cause revoke the probate thereof;

(3) grant, and, for any of the causes prescribed by law, revoke, letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship, and appoint successors to those persons whose letters are revoked;

(4) hear, examine, and decree upon accounts, claims, and demands existing between executors or administrators and legatees, or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(5) enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court; and

(6) enforce the distribution of estates by executors and administrators, and the payment or delivery by guardians of money or property belonging to their wards.

(c) Neither the execution nor the validity of a will or testament admitted to probate and record in the court may be impeached or examined collaterally. Subject to other provisions of this Part or other provisions of law, it is res judicata in all respects and to all persons.

(d) In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court.

(e) This section does not affect the jurisdiction conferred upon the Juvenile Court of the District of

Columbia by section 11–1551(a)(3). (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–501, 11–503, 11–504 (Feb. 27, 1801, ch. 15, § 12, 2 Stat. 107; June 21, 1870, ch. 141, § 4, 16 Stat. 160; June 8, 1898, ch. 394, 30 Stat. 434; Mar. 3, 1901, ch. 854, §§ 116, 117, 119, 31 Stat. 1208; June 30, 1902, ch. 1329, 32 Stat. 525; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b); May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates sections 11–501 and 11–503 of D.C. Code, 1961 ed., and that part of section 11–504 thereof that also related to the powers and jurisdiction of the District Court in probate matters.

The provision of section 11–501 of D.C. Code, 1961 ed., that the "special term" of the District Court, "known prior to March 3, 1901, as the orphans' court, shall be designated the probate court, and the judge holding said court shall have and exercise all the power and jurisdiction by law held and exercised by the orphans' court of Washington County, District of Columbia, prior to June 21, 1870", is omitted as obsolete, and is replaced by subsec. (a) of this section, which provides that "The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870", and by subsec. (d) of this section, which provides that "In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court". For a discussion of the former statutory provisions designating certain special terms of the District Court as the circuit court, equity court, criminal court, probate court, and district court, and the repeal and supersedure thereof, see revision note under section 11–502 herein.

For the same reason as given the preceding paragraph, the first part of the proviso in section 11–504 of D.C. Code, 1961 ed., "That the jurisdiction of said probate court shall not be exclusive of the jurisdiction of the said equity court to entertain suits by legatees or next of kin against executors or administrators, or by wards against their guardians for an accounting" is also omitted as obsolete.

Subsec. (e) is new, and is inserted for the purpose of construction. The Juvenile Court, under section 11–1551(a)(4) herein, has jurisdiction to determine the custody or guardianship of the persons of children under 18 years of age, in certain circumstances.

Changes are made in phraseology and arrangement.

For remainder of section 11–504 of D.C. Code, 1961 ed., see tables.

CROSS REFERENCES

Fees and costs, see § 15–701 et seq.

Probate code, see Titles 18—21.

Register of Wills as clerk of Probate Court, see § 11–504.

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1. In general

"It is not the province of a probate court to become a court of construction; that function belongs to the ordinary courts of law or equity." *Vestry* v. *Bostwick* (8 App. D.C. 452). See, also, *McIntire* v. *McIntire* (14 App. D.C. 337, affirmed 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

Jurisdiction and powers of probate court are substantially the same as those of its predecessor under the former laws. *Richardson* v. *Daggett* (24 App. D.C. 440). See, also, *Miniggio* v. *Hutchins* (43 App. D.C. 117).

Although the probate court is one of limited jurisdiction, it has all the authority necessarily implied in the act of its creation. *Guthrie* v. *Welch* (24 App. D.C. 562).

Court, in its sound discretion, may remove collector. *Id.*

The provisions of 1901 code, § 141 (§ 19–313) are permissive and not mandatory. *Young* v. *Norris Peters Co.* (27 App. D.C. 140).

The probate court of the District of Columbia is one of limited powers and jurisdiction. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

2. Alternative penalties

That the penalty imposed was $25 or 30 days did not take case out of this section requiring application for allowance of appeal where penalty imposed was less than $50, since the alternative of imprisonment may be avoided by payment of the fine. *Yeager* v. *District of Columbia* (1943, 33 A. 2d 629).

3. Appeal to general term

An appeal to the general term from the final order of probate made in the special term, which was not based upon a judicial determination of facts, but merely upon the finding of a jury of necessity, brought into review before the general term all the questions of law that are properly presented by the bill of exceptions taken at the trial. *Ormsby* v. *Webb* (1890, 10 S. Ct. 478, 134 U.S. 47, 33 L. Ed. 805).

4. Appointing new administrator

"Once letters have been granted to a party upon a misstatement or misconception of the facts, the same may be revoked and the party really entitled thereto appointed." *Emery* v. *Emery* (45 App. D.C. 576).

Probate court has power, over objection of surviving administrator, to appoint an administrator to fill a vacancy caused by the death of one of two administrators. *Dennis* v. *Hamilton* (48 App. D.C. 160), distinguishing *Williams* v. *Williams* (24 App. D.C. 214).

5. Bill of exceptions on appeal

"A proceeding in a probate court is not a proceeding in equity, and final orders therein are reviewable only in accordance with the practice at common law. * * * And the evidence in such cases must be brought up in bill of exceptions." *Craighead* v. *Alexander* (38 App. D.C. 229).

6. Caveat

Upon reversal of judgment sustaining caveat, and its remand, the case is reinstated in the court below upon the issue as originally framed. If caveator insists on new trial, he is entitled to it. Until the case is disposed of, the probate court is without jurisdiction to probate the will. *Hutchins* v. *Hutchins* (1920, 261 F. 460, 49 App. D.C. 118).

Where will was admitted to probate July 5, 1938 and letters testamentary issued, a caveat filed June 30, 1939 will be dismissed insofar as it is a caveat to a will of personal property. *Hengesbach* v. *Hengesbach* (1940, 114 F. 2d 845, 73 App. D.C. 1).

7. Claims against estate

"The probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio* v. *Hutchins* (43 App. D.C. 117). See, also, *Dante* v. *Miniggio* (46 App. D.C. 162).

Claims of son in the amount of $318.30 as against sister involving rents from deceased father's property held not

against an administratrix within meaning of this section, but were within jurisdiction of the municipal court. *Shields* v. *Shields* (1939, 101 F. 2d 255, 69 App. D.C. 331).

8. Contempt

Where probate court of District of Columbia had personal jurisdiction in main cause, that jurisdiction continued in that cause for purpose of making court's decree effective and in civil contempt proceeding for purpose of enforcing the original decree. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Where status of petitioner as an executor was fixed by will which he offered for probate, and, under the will and without necessity for ratification of his appointment by letters testamentary, he was authorized to perform certain acts in relation to the estate, and, instead of renouncing the appointment, petitioner acted upon his testamentary authority, he thereby voluntarily submitted himself to the jurisdiction of the probate court of the District of Columbia, so that the probate court had jurisdiction to commit petitioner for contempt where he failed to comply with a turn-over order following determination of invalidity of the will. *Id.*

Where petitioner seeking writ of habeas corpus offered for probate a will in which he was named as executor and he acted upon testamentary authority, but after determination of invalidity of will he failed to comply with order directing him to turn over assets of deceased's estate, the probate court of the District of Columbia properly exercised its power by adjudging petitioner guilty of contempt for his refusal to comply with the turn-over order. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

9. Continuance of jurisdiction

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

10. Contracts of executors

"In view of its supervisory power over their accounts a court of probate, of course, has a check upon the contracts of executors and administrators, and yet it has neither power to make contracts for them nor to direct or authorize them to make any." *MacKie* v. *Howland* (3 App. D.C. 461).

11. Costs and counsel fees

Where ordinarily dispute involved in action by widow against administrator to recover her distributive share of estate would be within jurisdiction of federal District Court for the District of Columbia sitting as a Court of Probate, but action was brought in Municipal Court of the District of Columbia because administrator had given a special bond, which relieved him from accounting and made personally answerable for debts and claims against estate, and it was determined that widow was entitled to prevail, administrator was not entitled to allowance of attorneys' fees. *Otho Ashton et ano.* v. *Arravera Ashton* (D.C. Mun. App. 1955, 117 A. 2d 459).

Counsel fee paid upon petition of certain legatees, said petition stating that counsel "had been managing their interests" and not reserving any right to have it finally charged against the estate, was properly charged against said legatees' interest. *McIntire* v. *McIntire* (14 App. D.C. 337, 20 App. D.C. 134, affirmed 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

An executor who has unsuccessfully defended a will may obtain counsel fees and costs incurred by him even though after term has expired at which judgment was rendered, for the costs and expenses chargeable in the probate court are costs of administration, payable out of the estate and is in control of the court during the whole period of administration. *Tuohy* v. *Hanlon* (18 App. D.C. 225).

In contest between next of kin of a testator and his legatees as to validity of will, the orphans' court has no power to allow counsel fees for defending the will so far as it will affect claims of creditors who have nothing to do with the contest. *Hamilton* v. *Shillington* (19 App. D.C. 268).

If upon the trial of the issues the executor sustains the validity of the will, or if he shows that he acted in good faith throughout, although the will may be overthrown for the want of testamentary capacity in the deceased, he may, in the discretion of the court, have an allowance for costs and counsel fees; but if will is not sustained, undue influence and bad faith decided against him, he should not be entitled to an allowance. *Kengla* v. *Randall* (22 App. D.C. 463).

There was no error in the allowance made for attorneys' fees to the administratrix. She was entitled to the services of an attorney in winding up the estate, and there is no evidence that the services were not worth the sum allowed, or that they were exclusively for the personal benefit of the administratrix. *Howard* v. *Howard* (38 App. D.C. 575).

Supreme Court, as a probate court, has power to grant an allowance to executors for counsel fees and costs from the estate, when they had unsuccessfully defended the validity of the will. *Hutchins* v. *Hutchins* (48 App. D.C. 286).

12. Custody of minors

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

13. Distribution

The court has jurisdiction to order partial distribution. *McLane* v. *Cropper* (5 App. D.C. 276).

Probate Court has jurisdiction over residuum of estate of which testator died intestate. *Sinnott* v. *Kenaday* (12 App. D.C. 115). See, also, *Sinnott* v. *Kenaday* (14 App. D.C. 1, reversed on other grounds 21 S. Ct. 233, 179 U.S. 606, 45 L. Ed. 339).

14. Escheat

The probate court has power, in absence of next of kin, to order in a proper case the payment of residuum of intestate's estate to an escheatee, as § 18–717 provides. *Frazier* v. *Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

The probate court, upon a finding that there are no heirs of deceased intestate, has power to decree distribution to District of Columbia as escheatee. *Id.*

The probate court's jurisdiction to hear, determine and decree upon all claims between executors and administrators and legatees or persons entitled to a distributive share of an intestate estate includes duty of finding that there are or that there are not statutory heirs, and upon the finding to make distribution as § 18–717 requires. *Id.*

15. Historical

An appeal lay to the United States Supreme Court from the judgment of the Circuit Court of the District of Columbia affirming a judgment of the Orphan's Court of Alexandria County, dismissing a petition to revoke the probate of a will. *Carter* v. *Cutting* (1814, 12 U.S. 251, 8 Cranch 251, 3 L. Ed. 553). See, also, *West* v. *Smith* (1844, 49 U.S. 402, 8 How. 402, 12 L. Ed. 1130).

The 1870 act (16 Stat. 160 ch. 141, § 4) abolished the orphans' court and invested the justice holding the special term of the Supreme Court for that purpose with the powers and jurisdiction then held and exercised by the former court, subject to the provisions giving an appeal to the general term from any order involving the merits, which is expressed in § 5, act of March 3, 1863. *Ormsby* v. *Webb* (1890, 10 S. Ct. 478, 134 U.S. 47, 33 L. Ed. 805).

Supreme Court of the District, in special and general term respectively, has, by virtue of successive acts of Congress, the probate jurisdiction formerly exercised by the Orphans' Court and the Court of Chancery of the State of Maryland and by the Orphans' Court and Circuit Court of the United States for the District; with authority also, at

a special term, to order any matter to be heard in the first instance at a general term. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

16. Jurisdiction

If probate court invested only with authority over wills and the settlement of estates should proceed to try parties for public offenses, jurisdiction over the subject of offenses being entirely wanting in the court, and this being known to the judge, his commission would afford no protection to him in the exercise of usurped authority. *Bradley* v. *Fisher* (1867, 80 U.S. 335, 13 Wall. 335, 20 L. Ed. 646).

The question of the jurisdiction of the court below can be raised by either party or by the court on its own motion. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

Action for declaration that plaintiffs were the surviving heirs and next of kin of decedent, whose marriage to defendant was allegedly invalid on ground that decree of divorce obtained by defendant from a prior husband in Virginia was obtained by fraud on a Virginia court, should have been brought in probate court. *Gordon et al.* v. *Matthews* (1959, 273 F. 2d 525, 106 U.S. App. D.C. 400).

The probate court of the District of Columbia has limited jurisdiction. *Perkins* v. *Berger* (1944, 145 F. 2d 856, 79 U.S. App. D.C. 286).

17. Jurisdiction of District Court

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

18. New trial

In granting a new trial, the court may limit the scope thereof. *Ecker* v. *Potts* (1940, 112 F. 2d 581, 72 App. D.C. 174).

The action of a trial court in granting or refusing a new trial is not reviewable unless there is a clear case of abuse of discretion. *Id.*

19. Order as final judgment

On order at special term, admitting a will to probate and record, is a final judgment reviewable by the general term; and such review, in this case a proceeding involving the validity of a will, is a "case," the final judgment of which can be reviewed by the Supreme Court of the United States. *Ormsby* v. *Webb* (1890, 10 S. Ct. 478, 134 U.S. 47, 33 L. Ed. 805).

A judgment admitting a will to probate may be reviewed by the United States Supreme Court. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

20. Ousting jurisdiction

Administration proceedings for property within the District, in a court of the District having proper jurisdiction, need not be dismissed because one of the parties asks for letters of administration in another jurisdiction on the claim that deceased had been domiciled in such State. *Overby* v. *Gordon* (1900, 20 S. Ct. 603, 177 U.S. 214, 44 L. Ed. 741).

21. Power of court

The probate court of the District of Columbia is empowered to enforce its decrees with those powers which may be exercised by courts of equity. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

22. Powers

The Probate Court of the District of Columbia has only the powers expressly conferred on it by law, and is a court of limited jurisdiction. *Fidelity & Deposit Co. of Maryland* v. *McQuade* (1941, 123 F. 2d 337, 74 App. D.C. 383).

23. Proof of wills

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie* v. *American Secur. & Trust Co.* (1921, 277 F. 543, 51 App. D.C. 141).

24. Purpose

The object of this section creating the probate court was to provide a tribunal in which it might be judicially determined who takes property left by a deceased intestate. *Frazier* v. *Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

25. Revocation

Where decedent's sister obtained letters of administration on false representation that decedent had been divorced from his widow, district court did not abuse its discretion in revoking letters, even though representation was not in bad faith. *Randall* v. *Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Under District of Columbia statute specifying causes for which letters of administration may be revoked, an administrator may be removed because his or her original appointment was due to misconception by appointing court of material facts, arising from misstatement by applicant for letters, even though this cause is not specified in statute. *Id.*

26. Sale of real estate

Although in Maryland before 1798, the orphans' court had no authority to order a sale of a ward's real estate, the orphans' court of the District of Columbia, with the approval of the Circuit Court of the United States of that District sitting in chancery, had such power. *Thaw* v. *Ritchie* (1887, 10 S. Ct. 1037, 136 U.S. 519, 34 L. Ed. 531).

Under this section, jurisdiction of the probate court over suits of creditors to subject real estate of decedents to payment of their debts was not exclusive of the jurisdiction of the equity court. *West* v. *McLaughlin* (1927, 18 F. 2d 813, 57 App. D.C. 163).

27. Title to property

See *Holzbeierlein* v. *Grant* (1941, 117 F. 2d 26, 73 App. D.C. 154).

Where party allegedly holding money as trustee for a minor under an active executory trust created by written instrument never admitted and in fact denied right of minor or minor's guardian to possession of money, the probate court had no jurisdiction to determine who was entitled to possession, since that court has no jurisdiction to decide a dispute regarding the title or the right of possession of personalty. *Jones* v. *Dunlap* (1940, 115 F. 2d 689, 73 App. D.C. 59).

28. —— Real estate

Determination of title to real estate devised by will held to be within general jurisdiction of a court of equity. *Beyer* v. *Le Fevre* (1902, 22 S. Ct. 765, 186 U.S. 114, 46 L. Ed. 1080).

Prior to act of June 8, 1898 (30 Stat. 434) (§ 11–501), "the probate of a will was evidence of its validity only so far as it affected personal property. As showing the passage of title to real estate the instrument itself must have been produced, with the proof of subscribing witnesses." *Young* v. *Norris Peters Co.* (27 App. D.C. 140).

29. Trial by jury

A proceeding for the probate of a will is not a suit in equity, but one in which the parties have the right to trial by jury. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

30. Unprobated will as evidence

Where plaintiff sought to enjoin obstruction of right of way easement on theory that plaintiff and her predecessors in title continuously, openly, notoriously, and adversely used right of way for more than 20 years, unprobated will of plaintiff's predecessor which had been filed in probate court was properly received to prove privity, a transfer of possession, and continuity of interest. *Bonds* v. *Smith* (1944, 143 F. 2d 369, 79 U.S. App. D.C. 118).

31. Will lost or destroyed

The will must be shown to have been irretrievably lost or destroyed, and that it had been duly and properly executed and attested; and that its destruction, if in the lifetime of the testator, was wholly without his knowledge or consent, at the time, or his subsequent ratification. *Fitzgerald* v. *Wynne* (1 App. D.C. 107).

§ 11–523. Concurrent jurisdiction of desertion and nonsupport cases.

The United States District Court for the District of Columbia has original jurisdiction, concurrently with the Juvenile Court of the District of Columbia, of all cases arising under sections 22–903 to 22–905, relating to desertion or nonsupport. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–907, 11–961 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, §§ 1, 13, 64 Stat. 1240, 1242).

Section consolidates the second sentence of subsec. 2 of section 11–907, and the first part of subsec. (a) of section 11–961, of D.C. Code, 1961 ed., both of which conferred jurisdiction on the District Court, concurrently with the Juvenile Court, of the desertion and nonsupport cases referred to. The same provisions are carried into section 11–1557 herein. For remainder of sections 11–907 and 11–961, see tables.

The reference to sections "22–903 to 22–905" is substituted for the reference in section 11–907 of D.C. Code, 1961 ed., to sections "22–902 to 22–905". This change from "22–902" to "22–903" conforms, not only with the provisions of section 11–961 of D.C. Code, 1961 ed., with which the provisions are herein consolidated, but, also, with the intent of Congress. See act July 2, 1940, ch. 525, 54 Stat. 735, which, in amending section 11–907, referred only to act Mar. 23, 1906 (ch. 1131, 34 Stat. 86; D.C. Code, 1961 ed., §§ 11–903 to 11–905). See, also, revision note under section 11–1556 herein. Section 11–902 is from act Mar. 3, 1901, ch. 847, § 4, 31 Stat. 1095.

The reference in section 11–961 of D.C. Code, 1961 ed., to section "22–906" is changed to "22–905" to conform, not only with the provisions of section 11–907 of D.C. Code, 1961 ed., consolidated herein, but, also, with act Jan. 11, 1951, ch. 1225, § 13, 64 Stat. 1242, from which section 11–961 was derived. That act refers only to the above-cited section 22–906, as amended (D.C. Code, 1961 ed., §§ 22–903 to 22–905). It does not make any reference to act May 18, 1910, ch. 248, 36 Stat. 403, from which section 22–906 of D.C. Code, 1961 ed., is derived.

Changes are made in phraseology.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11–541. Seal of Probate Court.

The Probate Court shall keep a seal for the court, and for the office of the Register of Wills. The seal shall be affixed to all certificates of the Probate Court, or of the Register, and to every process and writ of every kind issued from it. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–505 (Act of Maryland 1798, ch. 101, subch. 15, § 12; Comp. Stat. D.C., 1894, ch. 35, § 50; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Changes are made in phraseology.

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–701. Continuation of court—Court of record—Seal.
11–702. Composition—Appointment, qualifications, tenure, salaries, and oath of judges—Removal.
11–703. Absence, disability, or disqualification of judges—Vacancies—Quorum.
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SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

11–721. Clerk—Compensation—Powers and duties.
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11–741. Orders and judgments of Court of General Sessions and Juvenile Court.
11–742. Administrative orders and decisions.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

11–761. Contempt powers.
11–762. Oaths, affirmations and acknowledgments.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–701. Continuation of court—Court of Record—Seal.

(a) The District of Columbia Court of Appeals shall continue as a court of record in the District.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the first paragraph and all of the second paragraph of section 11–771 of D.C. Code, 1961 ed.

Section 11–771a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–771a, enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provisions, as revised, continue the District of Columbia Court of Appeals which, as the Municipal Court of Appeals for the District of Columbia, had been created by section 11–771 of D.C. Code, 1961 ed.

Changes are made in phraseology and arrangement.

Most of the provisions of section 11–771 of D.C. Code, 1961 ed., are carried into this chapter. For complete distribution of that section in this revised part, see tables.

§ 11–702. Composition—Appointment, qualifications, tenure, salaries, and oath of judges—Removal.

(a) The District of Columbia Court of Appeals shall consist of a chief judge and two associate judges appointed by the President of the United States, by and with the advice and consent of the Senate.

(b) A person may not be appointed as a judge of the court unless he:

(1) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the city of Alexandria, Virginia, and has maintained an actual place of abode in the area for at least five years prior to his appointment; and

(2) has been actively engaged in the practice of law in the District of Columbia for a period of at least five years immediately prior to his appointment.

(c) Each judge shall be appointed or reappointed for a term of ten years, which terms shall be staggered as heretofore provided for; and he shall continue in office until the appointment and qualification of his successor.

(d) The chief judge shall receive an annual salary of $25,000, and each associate judge shall receive an annual salary of $24,500.

(e) Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(f) A judge may be removed only in the manner and for the causes provided for the removal of Federal judges. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(2).)

AMENDMENTS

1964—Section 306(i)(2) of act Aug. 14, 1964, amended subsection (d) by changing $19,000 to $25,000 and changing $18,500 to $24,500.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771; 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Aug. 24, 1962, Pub. L. 87–586, § 1(b), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the third paragraph, all of the fourth and fifth paragraphs, and part of the sixth paragraph of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of that section in this revised part, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The words in the fourth paragraph of section 11–771 of D.C. Code, 1961 ed., "or who shall have been a judge of one of the courts of the District of Columbia,", that followed the residence requirement, constituted a temporary provision, and are omitted from this section as obsolete.

The provision in the fourth paragraph of section 11–771 of D.C. Code, 1961 ed., that, with respect to qualifications of appointees, service during the "present emergency" in the armed forces of the United States should be included in the computation of the five-year requirements specified therein, referred to service during the emergency occasioned by World War II, and is omitted as obsolete.

Because of the lapse of time since section 11–771 of D.C. Code, 1961 ed., was enacted on Apr. 1, 1942, and the completion of the original staggered terms, the provisions in subsec. (c) of this section are substituted for the provisions in the fifth and sixth paragraphs of that section that the chief judge should be appointed for a term of 10 years and the associate judges should be appointed initially for terms of 8 and 6 years each, and that subsequent appointments and reappointments should be for terms of 10 years each.

Changes are made in phraseology and arrangement.

§ 11–703. Absence, disability, or disqualification of judges—Vacancies—Quorum.

(a) When a judge of the District of Columbia Court of Appeals is absent, disabled, or disqualified, or when there is a vacancy in the office of judge of the court, the chief judge may designate and assign any judge of the District of Columbia Court of General Sessions to act temporarily as a judge of the court.

(b) When the chief judge of the court is absent, disabled, or disqualified, the judge next in seniority according to the date of his commission shall exercise his powers.

(c) Two judges of the court constitute a quorum. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section is taken from part of the third and part of the sixth paragraphs of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

§ 11–704. Clerks for judges—Compensation.

Each judge of the District of Columbia Court of Appeals may appoint and remove a personal clerk and shall fix his compensation in accordance with the Classification Act of 1949, as amended. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1.)

REFERENCE IN TEXT

The Classification Act of 1949, referred to in text, is set out as chapter 21, U.S.C., Title 5.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11–771 of the D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Muncipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

§ 11–721. Clerk—Compensation—Powers and duties.

The District of Columbia Court of Appeals shall appoint, and may remove, a clerk, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

The clerk shall exercise the same powers and perform the same duties in regard to matters within the jurisdiction of the court as are exercised and performed by the clerk of the United States Court of Appeals for the District of Columbia Circuit, as far as the latter may be applicable. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887;

Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-783, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11-771 of the D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

§ 11-722. Deputy clerks and other employees—Compensation—Duties.

Subject to the approval of the chief judge, the clerk of the District of Columbia Court of Appeals may appoint and remove such deputy clerks and other employees of the court as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with the Classification Act of 1949, as amended.

The Clerk shall supervise and direct the deputies and employees so appointed. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88-241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11-771, 11-771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88-60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11-771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11-771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as secton 11-771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

SUBCHAPTER III.—JURISDICTION

§ 11-741. Orders and judgments of Court of General Sessions and Juvenile Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from:

(1) final orders and judgments of the District of Columbia Court of General Sessions, including final orders and judgments of the Small Claims and Conciliation Branch and the Domestic Relations Branch of that court;

(2) interlocutory orders of the District of Columbia Court of General Sessions, including interlocutory orders of the Domestic Relations Branch of that court, whereby the possession of property is changed or affected, such as orders dissolving writs of attachment and the like; and

(3) final orders and judgments of the Juvenile Court of the District of Columbia.

(b) Except as provided by subsection (c) of this section, a party aggrieved by an order or judgment specified by subsection (a) of this section may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Reviews of judgments of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, and of judgments in the criminal division of that court where the penalty imposed is less than $50, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88-241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-767, 11-771, 11-771a, 11-772 (Apr. 1, 1942, ch. 207, §§ 6, 7, 8, 56 Stat. 194-196; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; July 18, 1958, Pub. L. 85-539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates part of the first paragraph of section 11-771, and the first and second sentences (including the proviso) of subsec. (a) of section 11-772, with section 11-767 of D.C. Code, 1961 ed., which extended to a party aggrieved by a final or interlocutory order or judgment entered in the Domestic Relations Branch of the Municipal Court the same right of appeal available in respect to a final or interlocutory order or judgment entered in the civil branch of that court. For remainder of sections 11-771 and 11-772, see tables.

Sections 11-751a and 11-771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11-772a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In subsec. (c), "criminal division" is substituted for "Criminal Branch". See section 11-091 herein and revision note thereunder.

Changes are made in phraseology and arrangement.

Cross References

Appeals to District of Columbia Court of Appeals, see § 17-301 et seq.

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1. In general

The Municipal Court of Appeals for the District of Columbia cannot extend language of statute so as to include a class of appeals which Congress plainly did not intend to be within court's jurisdiction. *Brown* v. *Randle & Garvin* (1943, 32 A. 2d 104).

The Municipal Court of Appeals for the District of Columbia has no power to entertain special appeals nor discretionary power with reference to interlocutory orders. *Id.*

An unsuccessful party cannot reinvest himself with a lost right of appeal by moving to set aside the judgment and grant new trial. *Crowley* v. *Wood* (1943, 31 A. 2d 861).

Generally, applications for allowance of appeal from judgment of Small Claims and Conciliation Branch of Municipal Court of District of Columbia are allowed only when there is a showing of apparent error or a question of law which has not been, but should be, decided by Municipal Court of Appeals. *Ionescue* v. *Dettmers* (D.C. Mun. App. 1947, 53 A. 2d 287). See, also, *American Storage Co.* v. *Briggs* (D.C. Mun. App. 1948, 56 A. 2d 557).

In brokers' action against restaurant owners for commissions for attempted sale of restaurant, agreement between restaurant owners and prospective buyers for sale of business, subsequent to trial and subsequent to submission of case on appeal, could not affect decision of reviewing court. *Young* v. *De Vito* (D.C. Mun. App. 1948, 56 A. 2d 558).

2. Abuse of discretion

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

Where petitioner for rehearing of determination which suspended his real estate broker's license for a period of 120 days, had an opportunity to present his testimony at hearing, and had offered facts in mitigation, Real Estate Commission of District of Columbia did not abuse its discretion in refusing to grant rehearing especially in view of fact that Commission had before it counter-affidavits which sharply contradicted the material allegation of petitioner's affidavit for rehearing. *Posner* v. *Martin, Adams and Jones, as members of Real Estate Commission, etc.* (D.C. Mun. App. 1957, 135 A. 2d 156).

3. Affirmance

The Municipal Court of Appeals is entitled to affirm a decision which it believes correct, even though the reasons given for the decision by the trial court are erroneous. *Plant* v. *Plant* (D.C. Mun. App. 1948, 57 A. 2d 204).

4. Allowance of appeal

Municipal Court of Appeals' denial of allowance of appeal constituted affirmance of judgment of conviction, and trial court could not thereafter vacate and set aside judgment. *District of Columbia* v. *Bosley* (D.C. Mun. App. 1961, 173 A. 2d 218).

Municipal Court of Appeals takes jurisdiction in order to determine whether appeal will be allowed when application for allowance of appeal is filed. *Id.*

Where application for leave to appeal from judgment of Small Claims and Conciliation Branch of Municipal Court merely stated that court denied defendant right to present a complete defense without any facts to support the conclusion, application would be denied. *American Storage Co.* v. *Briggs* (D.C. Mun. App. 1948, 56 A. 2d 557).

5. Appealable issues

Where defendant motor carrier by a motion to quash service of process raised question of jurisdiction of Municipal Court for the District of Columbia because of service on a person allegedly not authorized to accept service of process, defendant could participate in trial on merits and preserve right to present question on appeal. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

A finding or verdict on sharply conflicting evidence presents no reviewable issue on appeal. *McKenna* v. *Wilcox* (D.C. Mun. App. 1945, 41 A. 2d 303).

Government's contention that because a fine was suspended, there was no final sentence from which an appeal may be taken, is erroneous. *Smith* v. *District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 766).

The unauthorized suspension of execution of sentence did not take away appellant's right of appeal. The court had the power to impose the sentence and the void suspension did not void the sentence. *Ziegler* v. *District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 618).

6. Assignment of errors

Where record contained a full stenographic report of proceedings and testimony, Municipal Court of Appeals overlooked violation of its rules and considered various points argued in brief but which were not specifically assigned as error. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 2d 728).

Assignment of errors must be specific and must be filed prior to filing proposed statement of proceedings and evidence. *Lee* v. *U.S.* (D.C. Mun. App. 1944, 40 A. 2d 250).

Appellants' failure to file a statement of errors, was a breach of rules. *Hoover* v. *Babcock* (D.C. Mun. App. 1947, 53 A. 2d 591).

In Municipal Court's statement of proceedings and evidence, recital of evidence was surplusage when not called for by any of the errors assigned by appealing defendants, and could not establish trial court's lack of jurisdiction. *Brooks* v. *Trigg* (D.C. Mun. App. 1947, 51 A. 2d 302).

Where alleged ruling by trial judge refusing to direct verdict for plaintiff did not appear in stenographic transcript or in record and there was neither written prayer for preemptory instruction nor verbal request therefor, plaintiffs could not predicate assignment of error on a refusal to direct a verdict. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Where appellant assigned part of the judgment as error but did not mention it in his brief, the court would consider the assignment of error as abandoned and hence would not reach it. *Consumers Credit Service* v. *Craig* (D.C. Mun. App. 1950, 75 A. 2d 525).

Contention that the trial court should not have believed the testimony of prosecuting witness but should have believed appellant's testimony is not subject to review as an assignment of error. *Cohen* v. *United States* (D.C. Mun. App. 1949, 63 A. 2d 854).

7. Basis for revocation of motorist's permit

Where motorist was granted a hearing to show cause why his operator's permit should not be revoked, the hearing officer was only required to find that the motorist had accumulated sufficient points to warrant revocation, that the evidence offered in mitigation was not sufficient to justify an exception, and that motorist was not a fit person to operate a motor vehicle in the District of Columbia, before he was justified in revoking motorist's permit. *Ritch, Jr.* v. *Director of Vehicles and Traffic of*

District of Columbia (D.C. Mun. App. 1956, 124 A. 2d 301).

8. Burden of proof

It is well established that proof of delivery of goods and failure of bailee to retain them makes out a prima facie case for plaintiff, even in the case of gratuitous bailment. Where defendant offered no explanation or justification for his loss did offer proof regarding care of a car in his possession, burden of proof was not shifted to defendant but remained always with plaintiff presenting a question of fact for determination by the trial court. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D.C. Mun. App. 1949, 65 A. 2d 338).

In a suit against an attorney for negligence, the plaintiff must prove three things in order to recover: The attorney's employment, his neglect of a reasonable duty, and his negligence as the proximate cause of the loss to the client. *Niosi* v. *Aiello* (D.C. Mun. App. 1949, 69 A. 2d 57).

The general rule that the burden of proof in its true sense remains throughout the trial upon the party who affirms is not to be limited in application where the facts as to a given issue are solely or peculiarly within the knowledge of one party, although authorities may be found which seemingly place upon this party the burden of proving such facts. *Lang* v. *F. G. Arwood and Co.* (D.C. Mun. App. 1949, 65 A. 2d 194).

In an insured's action on a policy insuring against any loss arising from any cause whatsoever, with certain exceptions, the burden of proving that the loss comes within the exception rests on the insurer. *Id.*

9. Change in law

A change in the law between a nisi prius and an appellate decision requires reviewing court to apply changed law. *Cosby* v. *Shoemaker* (D.C. Mun. App. 1943, 34 A. 2d 27).

Where landlord made no motion for mistrial after objecting to opening statement of tenants' counsel that landlord's action to recover possession of premises was not brought in good faith and was motivated by dispute over an increase in rent, claim that court erred in overruling such objection could not be considered. *Daly* v. *Scala* (D.C. Mun. App. 1944, 39 A. 2d 478).

Save in exceptional cases, appellate court can review only points specifically brought to attention of and ruled upon by trial court. *Lee* v. *U.S.* (D.C. Mun. App. 1944, 40 A. 2d 250).

Objection to instruction presented for first time in appellate court was too late. *Collins* v. *U.S.* (D.C. Mun. App. 1945, 41 A. 2d 515).

10. Commission's authority to suspend

Where real estate broker's license was renewed on July 1, 1958, for one year and on July 2, he was served with an order of Real Estate Commission charging him with three acts of alleged misconduct occurring prior to July 1, 1958, commission had power to suspend broker's license by reason of charges of misconduct even though commission had knowledge thereof on renewal date of license. *Eiland* v. *Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

11. Conclusiveness of findings

Where there was a direct conflict of evidence in bastardy case, question was one for trier of the facts and not for the Municipal Court of Appeals for the District of Columbia on appeal. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1954, 103 A. 2d 204).

In action by dentist whose office formerly was in defendant's building, for damages resulting when fire extinguisher fluid was sprayed on some of plaintiff's dental equipment by defendant's employees when awning outside of plaintiff's office caught fire, evidence justified judgment adverse to plaintiff on grounds that there was no showing of negligence on defendant's part and that if defendant was negligent there was no showing that such negligence was proximate cause of damage suffered by plaintiff. *Davis* v. *Professional Bldg. Corp.* (D.C. Mun. App. 1954, 99 A. 2d 754).

In action by landlord for breach of oral lease, evidence sustained determination that parties had never had a meeting of minds as to terms of proposed letting. *Gruening* v. *Donaldson* (D.C. Mun. App. 1953, 96 A. 2d 846).

In action for injuries and property damage resulting when defendant's automobile skidded onto wrong side of road and struck plaintiff's automobile, evidence was sufficient to sustain finding that defendant was not negligent. *Simmons* v. *Ward* (D.C. Mun. App. 1952, 91 A. 2d 566).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use, and occupancy as dwelling by purchaser, evidence of looseness and some suspicious circumstances attending sale were by no means strong enough to require trial court or appellate court sitting in review to hold as a matter of law that there was bad faith in transaction or that purchaser had not acquired property for his own use. *Sigmond* v. *Kern* (D.C. Mun. App. 1951, 78 A. 2d 236).

The Municipal Court of Appeals cannot disturb a verdict if it is supported by substantial evidence. *De Bobula* v. *Coppedge* (D.C. Mun. App. 1944, 40 A. 2d 255).

Ultimate findings of fact of a trial court, if reached upon an application of erroneous legal standards, are not binding upon the appellate court. *Zis* v. *Herman* (D.C. Mun. App. 1944, 39 A. 2d 65).

Generally, negligence is a matter of fact to be determined by trial court, and if supported by substantial evidence its determination cannot be reviewed on appeal, and the same principle applies to contributory negligence. *Eclov* v. *Dalton* (D.C. Mun. App. 1944, 38 A. 2d 661).

Findings of trial judge, supported by substantial evidence, cannot be disturbed. *Ferranti* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 38 A. 2d 116).

The Municipal Court of Appeals is not at liberty to set aside trial judge's findings of fact unless they are clearly erroneous. *Goldberg* v. *Roumel* (D.C. Mun. App. 1946, 47 A. 2d 790).

Where the Municipal Court of Appeals could not say that the evidence as a whole was such as to justify holding that trial judge was plainly wrong in deciding for plaintiff on his claim, the judgment would be affirmed. *Rossiter* v. *National Sav. & Trust Co.* (D.C. Mun. App. 1946, 46 A. 2d 540).

Where evidence was such that either of two different conclusions might reasonably have been drawn therefrom and Municipal Court of Appeals could not say with conviction that trial judge's finding was plainly wrong or without evidence to support it, judgment could not be disturbed. *Little* v. *Dilling* (D.C. Mun. App. 1946, 46 A. 2d 371).

In action for legal services rendered to defendant charged with sedition, wherein evidence was in conflict on essential issues whether plaintiff had agreed to act without compensation, whether agreement extended beyond beginning of trial, whether arrangement required plaintiff to certify to affidavit of prejudice, and whether plaintiff actually performed services entitling him to compensation, trial judge's finding for defendant could not be disturbed. *Id.*

Where municipal court judge in a case without a jury first made a general finding for plaintiff and then on defendant's motion entered judgment for defendant, findings of trial court could not be treated as conclusive on appeal. *Rice* v. *Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

Where municipal court judge found that garage operator was negligent in failing to lock customer's automobile which was placed overnight in lot without a watchman, but that such negligence was not the proximate cause of injury to another parked automobile which was run into by one who had stolen such unlocked automobile, such findings of fact could not be disturbed on appeal. *Eesley* v. *Dottellis* (D.C. Mun. App. 1948, 61 A. 2d 564).

On appeal from judgment of conviction, appellate court cannot reweigh evidence or override trial court's fact findings, unless judgment is plainly wrong or without evidential support, though government produced only one

witness, whose testimony contained elements of weakness and contradictions and two witnesses testified for defense. *Filippone* v. *District of Columbia* (D.C. Mun. App. 1948, 61 A. 2d 565).

General finding of trial court on factual issue cannot be overridden on appeal if there is sufficient evidence in the record, together with inferences to be fairly drawn therefrom to sustain the finding. *Hollingsworth* v. *Rieffer* (D.C. Mun. App. 1948, 57 A. 2d 199).

Rarely is expert testimony as to value binding on the trier of the facts and it is never binding when inconsistent with other evidence. *Urciolo* v. *Sachs* (D.C. Mun. App. 1948, 62 A. 2d 308).

Ruling of trial court on question of knowledge by plaintiff of liability printed on claim check is one of fact, and cannot be disturbed where there is sufficient evidence to support it. *Lucas* v. *Auto City Parking Co.* (D.C. Mun. App. 1948, 62 A. 2d 557).

Court has no right to substitute its own judgment as to how the case should have been decided on the facts. *Goldberg* v. *Stouck* (D.C. Mun. App. 1950, 76 A. 2d 785).

The evidence clearly presented questions of fact as to negligence and contributory negligence. In such case, the findings of the trial court must stand. *Shipp* v. *Weaver* (D.C. Mun. App. 1950, 75 A. 2d 925).

Trial court's findings are to be accepted if supported by evidence or are not plainly wrong. *Rogers* v. *Cox* (D.C. Mun. App. 1950, 75 A. 2d 776).

A trial judge may not find the absence of negligence or contributory negligence as matter of law unless the evidence is so clear as to be beyond question. *Wohlstetter* v. *Capital Transit Co.* (D.C. Mun. App. 1948, 62 A. 2d 797).

The weight of the evidence is a question for the trier of the facts and a finding of fact supported by substantial evidence cannot be set aside on appeal. *Cohen* v. *United States* (D.C. Mun. App. 1949, 63 A. 2d 854).

12. Concurrent sentences

Where court imposed concurrent sentences based on findings of guilt on two charges of disorderly conduct and record on appeal revealed that court was justified in finding defendant guilty on one of the charges, even if evidence was insufficient to establish that he had been guilty with respect to other charges, he could not successfully complain of sentence for such other charge on appeal. *Cradock* v. *United States and District of Columbia* (D.C. Mun. App. 1959, 153 A. 2d 649).

13. Construction

Where defendants were found guilty on 18 counts of information for violation of Minimum Wage Law, and fine of $25 was imposed under each count, but fines under 14 counts were made concurrent with fines under other counts, so that result was that fines totaled $100, action of Municipal Court would be deemed the entering of one judgment in excess of $50, and therefore it was not necessary for defendants to comply with this section providing that reviews of judgments in criminal branch of Municipal Court, where penalty imposed is less than $50, shall be by application for allowance of appeal within 3 days from date of judgment. *Chambers* v. *District of Columbia* (1952, 194 F. 2d 336, 90 U.S. App. D.C. 153).

14. Continuance

Generally, postponement or continuance of trial is within discretion of trial court, and its action will not be disturbed on appeal except for an abuse of discretion. *Boyer* v. *U.S.* (D.C. Mun. App. 1944, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A. L. R. 209).

Where illness of defendant prevented trial, motion for continuance rests in sound discretion of the Trial Court and is not subject to reversal, unless discretion is abused or not in accordance with fixed legal principles. *Etty* v. *Middleton* (D.C. Mun. App. 1948, 62 A. 2d 371).

15. Costs

Municipal Court Rule prescribing that costs shall be allowed as of course to prevailing party may be unwise and unduly restrictive but is not unreasonable as a matter of law. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

The question whether intervenor in summary proceedings by landlord against tenant for possession of realty, was entitled to judgment for cost of stenographic transcript when landlord took a voluntary nonsuit, was a matter for the trial court, and until the trial court passed specifically on that question, the Municipal Court of Appeals had nothing to review. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Where costs consisted of a charge for the reporter's transcript of the trial, they must be disallowed since such charges under the rules are not recoverable as costs. *Holmes* v. *Floyd E. Davis Company* (D.C. Mun. App. 1949, 66 A. 2d 212).

Usage and practice, as well as statutory law, determine whether the cost of a bond is taxable and it was not error to disallow a bond premium as a taxable cost. *Thompson* v. *Clark* (D.C. Mun. App. 1949, 64 A. 2d 166).

An unusual item of expense, such as the cost of a reporter's transcript, cannot properly be taxed as costs either by the Municipal Court or the Municipal Court of Appeals. In the absence of express statutory authority, attorney's fees are not taxable as costs nor are expenses incurred in attempting to take the deposition of plaintiff in advance of trial. *Id.*

Counsel fees may be awarded as a condition of the vacating of the judgment of the garnishee, and the rule that, in the absence of statutory authority, attorneys' fees are not taxable as costs has no application since the payment of counsel fees is not imposed as costs but as a condition to obtaining relief to which the party is not entitled as a matter of right. *Bridgett* v. *Perpetual Building Association* (D.C. Mun. App. 1950, 75 A. 2d 780).

16. Directed verdict

Defendant having proceeded with submission of its own evidence after denial of its motion for directed verdict at close of plaintiff's case was precluded from seeking review of such action on appeal. *Woodward & Lothrop* v. *Heed* (D.C. Mun. App. 1945, 44 A. 2d 369).

Defendant who introduced evidence waived her right to complain of court's refusal to direct a verdict at close of plaintiff's case. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

The trial court is not justified in directing a verdict where there is substantial evidence upon which jury may base a conviction. *Collins* v. *U.S.* (D.C. Mun. App. 1945, 41 A. 2d 515).

On appeal from judgment on verdict directed for defendants, Municipal Court of Appeals was required to consider as admitted, every fact in evidence that tended to sustain plaintiff's case together with every inference reasonably deductible therefrom. *Resnick* v. *Wolf & Cohen* (D.C. Mun. App. 1946, 49 A. 2d 809).

The practice of submitting cases to the jury and reserving determination of questions of law raised on motion for a directed verdict, so that if the Municipal Court of Appeals disagrees with the trial court's ruling on motion for directed verdict, the jury's verdict can be reinstated without necessity for a new trial, is commendable. *Resnick* v. *Wolf & Cohen* (D.C. Mun. App. 1946, 49 A. 2d 809).

Failure to interpose motion for directed verdict at close of all testimony and secure ruling thereon precludes party from questioning sufficiency of evidence on appeal. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

On appeal from judgment on directed verdict for defendants, evidence of plaintiffs was taken in light most favorable to plaintiffs. *Young* v. *De Vito* (D.C. Mun. App. 1948, 56 A. 2d 558). See, also, *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Directed verdict in favor of the District was proper where there was no evidence showing the defendant's automobile ran through a depression and collided with plaintiff's automobile in road maintained by the District. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

The Municipal Court should use more frequently special verdicts as authorized by court rules in multiple controversies or complicated situations for such procedure tends to produce better defined issues of fact, better focused legal questions, and clearer and safer results. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company* (D.C. Mun. App. 1950, 72 A. 2d 254).

Court may set aside a verdict supported by substantial evidence where in its opinion it is contrary to the weight of the evidence, or is based upon evidence which is false. Even though the evidence be sufficient to preclude the direction of a verdict, it is still duty of the appellate court to exercise such power to prevent miscarriage of justice. *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 68 A. 2d 207).

A defendant does not lose his right to make a motion for a directed verdict in his favor even though he has himself offered evidence. Such a party is entitled to make such a motion even though he has made his opening statement. *Niosi* v. *Aiello* (D.C. Mun. App. 1949, 69 A. 2d 57).

17. Discretion of court

A ruling refusing new trial will not be disturbed except for an abuse of discretion. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

The right of appeal is a statutory right, and Municipal Court of Appeals has no discretion to entertain appeals not taken in accordance with this section requiring application for allowance of appeal where penalty is less than $50, nor can language of this section be extended. *Yeager* v. *District of Columbia* (D.C. 1943, 33 A. 2d 629).

Ordinarily, the denial of motion for new trial is nonappealable, but refusal to grant new trial on ground of newly discovered evidence may be ground for reversal where an abuse of discretion appears, since newly discovered evidence does not appear on the record supporting judgment and the only possibility for review of the ruling lies in appeal from denial of motion for new trial. *Hamilton* v. *U.S.* (1944, 140 F. 2d 679, 78 U.S. App. D.C. 316).

Where accused was convicted in the morning for offense committed the night before, trial court abused its discretion in denying motion for new trial for newly discovered evidence when court indulged in hypothetical interpretation of statement of newly discovered evidence in affidavit in order to make it consistent with testimony it was intended to rebut. *Id.*

The granting of a mistrial because of prejudicial newspaper publicity is within sound discretion of trial judge. *Sherman* v. *U.S.* (D.C. Mun. App. 1944, 36 A. 2d 556).

The question whether trial should continue on without a recess past the dinner hour is a matter in the realm of discretion of trial judge. *Shapiro* v. *Vautier* (D.C. Mun. App. 1944, 36 A. 2d 349).

Whether a jury shall be permitted to view premises is discretionary with trial court and its action thereon is reviewable only for abuse. *Coleman* v. *Chudnow* (D.C. Mun. App. 1944, 35 A. 2d 925).

Whether testimony shall be received on motion for new trial is largely in discretion of trial court and except in clear cases action of trial court in such matters ought not to be disturbed. *Id.*

Whether discretion to grant or refuse a continuance is abused depends upon whether it is exercised in the furtherance of justice, and, if it serves to delay or defeat justice, it may well be deemed an "abuse of discretion". *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1944, 34 A. 2d 609).

The Municipal Court of Appeals for the District of Columbia does not have discretionary power to entertain special appeals from interlocutory orders. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

Under civil rule 53(b), authorizing trial court to grant relief from judgment entered against party through his mistake, inadvertence, surprise or excusable neglect, ordinarily that is a matter in trial court's discretion and is not reviewable. *Barnes* v. *Conner* (D.C. Mun. App. 1945, 44 A. 2d 925).

Where defendant had made clear to court and to plaintiff that defendant intended to defend the case, continuance of one day was granted, court's alleged intention that defendant should file his papers prior to call of next day's calendar was not clearly expressed and defendant filed his affidavit of defense and demand for jury trial a few hours after default was entered, refusal to vacate default was an abuse of discretion. *Id.*

Rules limiting time for various steps on appeal in the Municipal Court of Appeals were not adopted for the convenience of the court but in the interest of an orderly an expeditious appellate procedure as prescribed by the Congress. *Karika* v. *District of Columbia* (D.C. Mun. App. 1946, 47 A. 2d 93).

The refusal of a new trial may not be reviewed on appeal unless there is clear abuse of discretion. *Brown* v. *Haas* (D.C. Mun. App. 1950, 72 A. 2d 39).

Trial court did not commit error when, after the jury had retired, it gave further instructions at jury's request as to what constituted a trespass and refused plaintiff's counsel's request for additional instructions on the ground that such instructions would only confuse the jury. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

Trial court did not abuse its discretion by not reinstating a second action on the mere showing that plaintiff's counsel through inadvertence failed to appear and was in another court at the time. *Jarcy* v. *Griffith* (D.C. Mun. App. 1949, 65 A. 2d 919).

Where trial court stated to counsel for the defendant "Don't you ever again ask a question like that before me or you will be done with", it did not violate the rule that a trial judge should not use language which tends to bring an attorney into contempt before the jury. It is within the judge's province to admonish and rebuke counsel as occasion may require, and to use other preventative measures necessary to maintain the dignity of the court. In rebuking counsel, the degree of severity is left to the trial judge so long as it does not prevent the party from having a fair trial. *Rosenberg* v. *District of Columbia* (D.C. Mun. App. 1949, 66 A. 2d 489).

It was not an abuse of discretion for trial court to refuse moving party leave to amend after verdict, where she knew or should have known what the pending litigation would probably develop. Having lost on one defense, she had no right to have case reopened to assert a new one. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

A court may not limit cross-examination upon a pertinent subject at the outset, but after a substantial exploration of the subject, a judge is within his right in limiting examination which may become needlessly protracted. Where the record discloses that on a trial for the illegal sale of alcoholic beverages, appellant's counsel was permitted to cross-examine freely and fully all government witnesses, there was no undue restriction or limitation upon the right of cross-examination. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909).

Where government witness admitted that, during a recess, he had talked with another government witness who had been excluded from the court room, trial court did not abuse its discretion in permitting him to testify. *Id.*

Allowance or refusal of a motion to set aside a default is within the discretion of the Trial Court. Such discretion implies conscientious judgment which takes into account the law, the particular circumstances and competing considerations. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

While the rules of the court contemplate that leave to amend shall be freely given, it is not their purpose to allow amendments under any and all circumstances. *Buchanan* v. *Farmer* and *Light* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

Allowance or refusal of a motion to set aside a default is within the sound discretion of trial court. *Huff* v. *Kraft* (D.C. Mun. App. 1949, 63 A. 2d 667).

Whether a defense shall stand or be set aside rests in the sound discretion of the trial court, and where, before denying the motion to vacate, the trial court heard all the testimony to determine whether appellant had a meritorious defense and was convinced that no such defense existed, discretion was not abused. *Schoon* v. *Marvins Credit, Inc.* (D.C. Mun. App. 1949, 65 A. 2d 212).

It was error for trial court to refuse to exercise its discretion in setting aside a dismissal since a refusal to exercise discretion has the same effect as an abuse of discretion. *Quick* v. *Paregol* (D.C. Mun. App. 1949, 68 A. 2d 211).

18. Dismissal

Where Municipal Court of Appeals lacked jurisdiction of appeal in a criminal case, the appeal must be dismissed although appellee made no motion to dismiss and did

not raise the question in his brief, since neither silence nor consent of the parties could confer jurisdiction on appeal, and lack of jurisdiction must be noticed even though the parties desire a decision on the merits. *Yeager* v. *District of Columbia* (1943, 33 A. 2d 629).

The denial of motion to dismiss action was not a "final" or appealable order and dismissal of appeal from such decision was required. *De Bobula* v. *Tamamian* (D.C. Mun. App. 1947, 55 A. 2d 204).

Where brief for appellant set out twenty-two alleged errors occurring at trial but contained no statement of the case with references to the transcript of record and no arguments in support of the claim of error as required by rule and where the errors assigned would require searching through the two hundred-page transcript, the so-called brief is no brief at all and the appeal must be dismissed. *Poole* v. *Hurlbert* (D.C. Mun. App. 1949, 67 A. 2d 266).

Where record on appeal was not only filed late but was filed without authority in complete disregard of order refusing further extensions, the appeal should be dismissed. *Greene* v. *Mindell* (D.C. Mun. App. 1950, 72 A. 2d 775).

19. Due process

Where motorist was granted a hearing to show cause why his motor vehicle operator's permit should not be revoked and orally stated at the hearing that the revocation would deprive him of his means of livelihood in that his occupation was that of a truck driver, motorist could not claim that he was deprived of due process on the ground that the director of vehicles and traffic failed to advise him that he was entitled to the assistance of counsel at the hearing. *Ritch, Jr.* v. *Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1956, 124 A. 2d 301).

20. Duty of court

In absence of objection, a duty is nevertheless imposed on court to notice an excess of jurisdiction and to limit review to appealable orders or judgments. *Ray* v. *Bruce* (1943, 31 A. 2d 693).

21. Evidence

In action for damage to plaintiff's untenanted home, consisting of freezing and bursting of radiators and pipes, due to failure of defendant to deliver fuel oil to home after it had promised to do so on day on which plaintiff had called by telephone, evidence sustained finding that contract existed between parties binding defendant to deliver oil on that day, despite fact that defendant had no record of telephone call. *Woodson Co.* v. *Sakran* (D.C. Mun. App. 1957, 129 A. 2d 175).

Even if landlord and subtenant had agreed as to terms of new lease between them, evidence sustained determination that parties did not intend to be bound by agreement until it was executed in formal document and that landlord's delay in executing and returning lease did violence to one of express conditions of proposed agreement. *Gruening* v. *Donaldson* (D.C. Mun. App. 1953, 96 A. 2d 846).

The Municipal Court of Appeals does not have power to weigh evidence or render decisions on factual disputes. *Keefe* v. *Moskin Stores* (D.C. Mun. App. 1953, 95 A. 2d 336).

In action against former employee for cash and merchandise shortages, for which employee had contracted to be liable in absence of showing that shortages were caused by persons other than employee and his fellow employees, evidence was sufficient to sustain finding that former employee had breached his contract. *Id.*

In action for damage to plaintiff's automobile allegedly resulting from its collision with the open, left-front door of defendant's parked automobile, wherein defendant filed counterclaim for his damages, evidence sustained finding and judgment in defendant's favor on both claim and counterclaim. *Kuzminsky* v. *Wagner* (D.C. Mun. App. 1952, 87 A. 2d 411).

In seller's action for balance on a shipment of fruit and also for share of profits in a carload of bananas which seller claimed it and buyer agreed to handle in a joint venture, evidence was sufficient to sustain findings that shipment of fruit was in fact sold by seller to buyer, that carload of bananas was subject to mutual agreement between seller and buyer under which they were to share mutually in profits or losses on joint venture, and that there was in fact a profit on transaction in which seller was entitled to share. *Spivey* v. *W. B. Florence Banana Co.* (D.C. Mun. App. 1951, 78 A. 2d 861).

In action by landlord against tenant to recover possession of dwelling house on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, evidence sustained trial court's finding that plaintiff had in good faith contracted as alleged. *Sigmond* v. *Kern* (D.C. Mun. App. 1951, 78 A. 2d 236).

Appellate court examines evidence only to test its sufficiency. *Collins* v. *U.S.* (D.C. Mun. App. 1945, 41 A. 2d 515).

The Municipal Court of Appeals may not substitute its judgment on conflicting evidence for that of the trial court. *Modern Engineering & Service Corp.* v. *McCrea* (D.C. Mun. App. 1946, 46 A. 2d 767).

Where defendant went to the jury without moving for a directed verdict at close of the case, she could not challenge the sufficiency of the evidence on appeal by assigning as error the refusal to grant a judgment notwithstanding verdict. *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Question of weight of evidence was for trial court as trier of the facts, and was not subject to review on appeal. *Etty* v. *Federal Consulting Service* (D.C. Mun. App. 1948, 59 A. 2d 692).

On appeal from judgment entered on jury's verdict, Municipal Court of Appeals was bound to accept jury's determination of the facts and could not reweigh the evidence. *Lyons* v. *Capital Transit Co.* (D.C. Mun. App. 1948, 62 A. 2d 312).

Reviewing court determines only whether there was sufficient evidence to support trial court's finding. *De Bobula* v. *Winston* (D.C. Mun. App. 1948, 57 A. 2d 742).

A general finding for plaintiff requires appellate court to accept evidence most favorable to his case. *Shu* v. *Basinger* (D.C. Mun. App. 1948, 57 A. 2d 295).

Preliminary evidentiary questions such as the competency of a witness and the admissibility of the evidence are within the control of the trial judge, but these questions must be distinguished from credibility and the weight to be assigned to competent and admissible testimony. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Declaration made from a few moments to five or ten minutes after an accident neither met test of spontaneity nor closeness of time so as to be considered part of the res gestae. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

As a general rule any evidence which is logically probative of some fact in issue is relevant and prima facie admissible unless it conflicts with some settled exclusionary rule. *Id.*

Admission in evidence of an "incidental book" maintained at police precinct to show District had notice of the depression in District road was harmless error where there was other evidence covering the same subject and the report would have no relevancy without testimony connecting the depression with the accident. *Id.*

Weight of the evidence and credibility of the witness are questions for the trial court. *Rogers* v. *Cox* (D.C. Mun. App. 1950, 75 A. 2d 776).

The weight of the evidence is a question for the trier of the facts, and a finding of fact supported by substantial evidence cannot be set aside by an appellate court. The trier of the facts is the judge of the credibility of witnesses. *Soresi* v. *Repetti* (D.C. Mun. App. 1950, 76 A. 2d 585).

Testimony offered as character evidence was inadmissible where plaintiff's good character had not been put in issue. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

No error was committed in excluding federal and district income tax returns by which defendant proposed to show that the business was owned and operated by her alone and not as a partnership where such evidence would have been merely corroborative of other evidence, verbal and documentary. *Id.*

An offer made in compromise is not admissible in evidence. The test is whether the statement is made conditionally or unconditionally. A conditional concession is not admissible whereas an unconditional assertion is admissible. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D.C. Mun. App. 1949, 65 A. 2d 338).

It is necessary that one objecting to evidence make known to the court and opposing parties the precise ground on which he relies, since grounds not raised in the trial court will not be considered on appeal. *Id.*

It was not error for trial court to refuse to permit police officer to testify regarding the extent to which arrest followed from tips or information given to the police, where the information sought was immaterial. *Glover* v. *Jewish War Veterans of United States* (D.C. Mun. App. 1949, 68 A. 2d 233).

Where an owner signed a listing agreement with broker, authorizing sale on specified terms if and when a purchaser was found, it was not error for trial court to permit the owner to testify that she had signed on the assurance that time of her occupancy would be extended if she had no place to go. Such testimony does not vary a written contract by parole testimony and was not offered to contradict any written instrument, but only to show misrepresentation. *Ellis* v. *Morgan* (D.C. Mun. App. 1949, 65 A. 2d 797).

One cannot speculate on allowing evidence to be introduced, participate in developing it, and then, when evidence proves unfavorable, demand that it be stricken. *Lewis* v. *Shiffers* (D.C. Mun. App. 1949, 67 A. 2d 269).

While it is well established that the proof of delivery and failure of the bailee to return makes out a prima facie case for the plaintiff, even in case of a gratuitous bailment, requiring the defendant to go forward with proof, such proof need not necessarily consist of an explanation or justification of the loss. *Columbia Operating Corp.* v. *Kettler* (D.C Mun. App. 1949, 67 A. 2d 267).

22. Findngs of fact

Under point system which provided for assessment of points against a motorist for "moving" traffic violations, Director of Vehicles and Traffic could not accept finding of guilt under information charging motorist with traveling more than 25 miles an hour in a 25 mile zone as proof that motorist was guilty of speeding 40 miles per hour as stated in arresting charge and therefore he could not assess points against motorist on basis of arresting charge. *Chappelle* v. *Board of Commissioners of District of Columbia* (D.C. Mun. App. 1955, 110 A. 2d 697).

Findings by trial court for landlord on questions whether landlord had breached lease by failing to make repairs properly and whether tenant was damaged by breach were not plainly wrong. *Burka* v. *Seidenberg* (D.C. Mun. App. 1954, 108 A. 2d 159).

It was not error for the trial court to deny appellant's request for findings of fact and conclusions of law, for trial court rules provide that in actions tried on the facts without a jury the court may, if requested by any party, find the facts specially and state separately its conclusions of law. The rule is permissive, not mandatory. *Eide* v. *Traten* (D.C. Mun. App. 1950, 73 A. 2d 522).

Although there was no requirement that trial court file findings of fact, where judgment was entered on specific findings leaving undetermined a material issue of fact as to which evidence was conflicting, Municipal Court of Appeals could require finding on such issue. *Provident Life Ins. Co.* v. *Grant* (1943, 31 A. 2d 885).

An order overruling a motion to quash service on garnishee was interlocutory and not appealable, but appeal was properly taken from final judgment, as against claim that application for appeal was not filed within statutory time. *Atlantic Coast Line R. Co.* v. *Goldberg* (D.C. Mun. App. 1944, 39 A. 2d 563).

The rule that findings of fact are entitled to great weight in an appellate court is modified where such findings are based wholly on depositions. *Rogers* v. *Cox* (D.C. Mun. App. 1950, 75 A. 2d 776).

23. Instructions

Defendant's request for instruction that opinion evidence of a handwriting expert is so weak as scarcely to deserve a place in our system of jurisprudence was properly refused as not stating the law. *Boyer* v. *U.S.* (D.C. Mun. App. 1945, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

Trial court had duty of including in its charge a definition of reasonable doubt, and appellate court could not assume that trial court failed in its duty in such respect. *Id.*

Charge to jury cannot be considered piecemeal but must be viewed in its entirety. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

Where the text of the instructions was not included in the record and the court cannot tell what parts of the sections in question were read, and the record shows that defendant's only objection to the court's charge was confined to that portion of it relating to unjust enrichments, we cannot consider such objection on appeal. *Hillyard* v. *Smither & Mayton, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 166).

Instructions must be suited to the facts of the particular case and the judge should explain the law of the case, state the issues involved, and should also point out the essentials to be proved on one side or the other. *Reese* v. *Wells* (D.C. Mun. App. 1950, 73 A. 2d 899).

Police officers, who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct shall be received with caution. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

24. Joint appeal

Where eight separate changes were consolidated for trial and verdict of guilty and a fine of $25 was imposed for each offense, defendant could not consider the total of the fines imposed as one penalty and file a joint appeal, since judgment in each case was a single judgment from which there was no right of appeal but only the right to make application for appeal. *Yeager* v. *District of Columbia* (1943, 33 A. 2d 629).

25. Judgment notwithstanding verdict

Where appellants made no motion for directed verdict at trial, Municipal Court of Appeals would not review ruling refusing judgment notwithstanding verdict. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Reviewing court, in judging the correctness of decision entering a judgment notwithstanding the verdict, applies the same tests as are applied upon review of ruling on motion for directed verdict. *Vaughn* v. *Neal* (D.C. Mun. App. 1948, 60 A. 2d 234).

There is a difference between the legal discretion of the court to set aside a verdict as against the weight of evidence, and the obligation of the court to withdraw a case from the jury or direct a verdict for insufficiency of evidence. In the latter case, it must be so insufficient in fact as to be insufficient in law. In the former case, it is merely insufficient in fact and it may be either insufficient in law, or may have more weight, and not enough to justify the court in exercising the control which the law gives it to prevent unjust verdicts, to allow a verdict to stand. *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 69 A. 2d 207).

26. Judicial notice

Municipal Court of Appeals took judicial notice of wartime difficulties in obtaining laundry service as well as many other services in the District of Columbia, but refused to assume therefrom that it was impossible for a customer of one laundry to find another laundry willing and able to accept him as a customer. *Manhattan Co.* v. *Goldberg* (D.C. Mun. App. 1944, 38 A. 2d 172).

The court will take judicial notice of adoption of OPA regulations and existence of official acts necessary to their validity. *Sherman* v. *U.S.* (D.C. Mun. App. 1944, 36 A. 2d 556).

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns*

v. *District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

Court took judicial notice that suffering and inability to get about and climb stairs is normal sequel of most surgical operations, especially in the presence of pregnancy. *Barnett* v. *Bachrach* (D.C. Mun. App. 1943, 34 A. 2d 626).

The Municipal Court of Appeals will take judicial notice that Government of the United States has no connection with Inter-Allied Shipping Pool and that such Pool does not exist as an agency of the United States Government and is not created by agreement to which United States is a party. *Trost* v. *Tompkins* (D.C. Mun. App. 1945, 44 A. 2d 226).

The Municipal Court of Appeals would take judicial notice of appeal in prior case between the same parties. *Block* v. *Wilson* (D.C. Mun. App. 1947, 54 A. 2d 646).

Courts will judicially notice that desks are ordinarily and properly used by officers and employees of the government for keeping their personal effects. *Blok* v. *United States* (D.C. Mun. App. 1950, 70 A. 2d 55).

Court will take judicial notice that during the war the government and various persons in official and unofficial positions urged that the public forego luxury items which consumed manpower and critical war materials. It cannot be said as a matter of law that the landlord's refusal to supply such items rendered him guilty of a service standard violation. *Connolly* v. *B. F. Saul Co., Inc.* (D.C. Mun. App. 1949, 68 A. 2d 236).

Courts may take judicial notice that the period of human gestation is about two hundred eighty days or nine calendar months. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

27. Jurisdiction

Generally, Municipal Court of Appeals' jurisdiction is restricted to review of final orders or judgments. *Morfessis* v. *Hollywood Credit Clothing Co.* (D.C. Mun. App. 1960, 163 A. 2d 825).

The Municipal Court of Appeals for the District of Columbia has no power of review over actions of administrative agencies of the District of Columbia except as conferred by statute, and only decisions of Board of Examiners and Registrars of Architects reviewable by such court are those which annul or revoke a certificate. *Norton* v. *L. M. Leisering et al.* (D.C. Mun. App. 1956, 125 A. 2d 56).

Where petitioner was issued certificate of registration by Board of Examiners and Registrars of Architects in 1925, and renewed such certificate in 1926, but permitted it to lapse in 1927, and took no further action with respect thereto until he unsuccessfully applied for restoration of his certificate in 1950, petitioner's certificate was not revoked, and denial of renewal thereof in 1950 and from time to time thereafter was not tantamount to a revocation which would have been reviewable by the Municipal Court of Appeals for the District of Columbia. *Id.*

Under certain circumstances, denial by Board of Examiners and Registrars of Architects of certificate of registration to architect could be tantamount to a revocation of such certificate, and, therefore, the Municipal Court of Appeals for the District of Columbia, which can review board's decision in annulling or revoking a certificate, is not completely without jurisdiction over board's renewal procedure. *Id.*

Municipal Court of Appeals for District of Columbia has no jurisdiction to review orders of Board of Revocation and Review of Hackers' Identification Licenses for District of Columbia. *Johnson* v. *Board of Commissioners of the District of Columbia* (D.C. Mun. App. 1955, 116 A. 2d 161).

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance," and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

Under this section providing that any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia may appeal to the Municipal Court of Appeals, such court had jurisdiction of government's appeal from an order of the municipal court for such district quashing a warrant of arrest in a disorderly house case, in view of § 23–105 entitling the government to appeal in criminal prosecutions. *U.S.* v. *Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

In a class B action involving less than $500, Municipal Court rules apply, and trial court erred in ruling that defendant waived jurisdiction by failing to raise it by motion since rules do not preclude raising any defense available; further, jurisdiction over subject matter may never be conferred by consent and may even be questioned for first time on appeal. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

28. Law governing

The Municipal Court of Appeals for District of Columbia must follow the law as stated in highest appellate court of the District. *Davidson* v. *Jones* (D.C. Mun. App. 1943, 34 A. 2d 261).

In absence of local statutes governing landlord's liability to tenant, Municipal Court of Appeals must look to the common law as reflected in decisions of Supreme Court, of United States Court of Appeals, and the courts of some of the states. *Hariston* v. *Washington Housing Corp.* (D.C. Mun. App. 1946, 45 A. 2d 287).

29. Mandate

Mandate of appellate court from which the trial court had no power to deviate, clearly required that there be a trial on the merits, completely unemcumbered by any earlier proceedings below. Even upon a reversal with general directions, the case stands in the trial court in the same position as if no trial had been held, pleadings can be amended or new ones filed, new issues framed, and a complete new trial will result, subject only to the restriction that the new proceedings shall not be inconsistent with the opinion of the appellate court. *Glenn* v. *Mindell* (D.C. Mun. App. 1950, 74 A. 2d 835).

30. Mandatory revocation

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. *Oliver* v. *Silver* (D.C. Mun. App. 1959, 155 A. 2d 719).

31. Misrepresentation

In proceeding to review decision of Real Estate Commission suspending petitioners' licenses for period of ten days, record supported Commission's findings that petitioners had made substantial misrepresentations in advertising property in area zoned against multiple-family dwellings as having apartment, and that petitioners had demonstrated such unworthiness to act as licensed real estate brokers as to endanger interests of public. *Ehrlich et ano.* v. *Real Estate Commission* (D.C. Mun. App. 1956, 118 A. 2d 801).

32. Modification of judgment

Where judgment for insured for recovery of disability benefits under life policy and for return of premiums was incorrectly computed in favor of insured, Municipal Court of Appeals ordered insured to file a remittitur of excessive amount or, in the alternative, ordered a new trial. *National Life Ins. Co.* v. *White* (D.C. Mun. App. 1944, 38 A. 2d 663).

Where no authority was cited in support of proposition and record contained no evidence from which its soundness could be determined, appellate court would not pass upon such proposition. *Manhattan Co.* v. *Goldberg* (D.C. Mun. App. 1944, 38 A. 2d 172).

A judgment appealed from may be modified by reducing amount thereof when computation of amount due appellee is clear on record. *Group Health Ass'n* v. *Shepherd* (D.C. Mun. App. 1944, 37 A. 2d 749).

33. Moot questions

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without

attempting to stay judgment and without making protest or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 189).

A federal appellate court will not review a moot case. *Id.*

Where in District of Columbia Municipal Court no supersedeas bond was filed to stay judgment for landlord for possession of an apartment and United States marshal evicted tenant, who stated restitution was expected if the appeal from judgment was successful, the surrender of possession was not voluntary, and appeal was not moot. *Zindler* v. *Buchanon* (D.C. Mun. App. 1948, 61 A. 2d 616).

It is not the duty of the court to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue. Moreover, it has often been decided where possession of land was involved under an alleged lease, the question becomes moot after the expiration of such lease. *Alpert* v. *Wolf* (D.C. Mun. App. 1950, 73 A. 2d 525).

Where petitioner failed to post bond and was committed to jail the case became moot after petitioner served his sentence upon its expiration there was no longer a subject matter on which the judgment of court could operate. Reversal of the judgment cannot operate to undo or restore the petitioner to the penalty of the term of imprisonment which he has served. *Hill* v. *United States* (D.C. Mun. App. 1950, 75 A. 2d 138).

The question of refusal to require the posting of a supersedeas bond pending appeal has become moot because even if a supersedeas bond had been posted, it would have expired by its own terms upon the reversal of the judgment which the bond superseded. *Daime* v. *Price* (D.C. Mun. App. 1950, 71 A. 2d 611).

34. Motion for summary judgment

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts but he must state facts in detail showing that he has personal knowledge, and the burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

35. —— New Trial

Refusal to grant a new trial may be reviewed by Municipal Court of Appeals only if there is an abuse of discretion. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

The grant or refusal of new trial may be reviewed on appeal only where there is a clear abuse of discretion. *Palmer Const. Co.* v. *Patouillet* (D.C. Mun. App. 1945, 42 A. 2d 273).

Trial judge's disposition of a motion for new trial is not subject to appellate review unless an abuse of discretion is shown. *Peay* v. *Parks* (D.C. Mun. App. 1945, 42 A. 2d 250).

Once an appeal is perfected, trial court is without power to order a new trial. *Maltby* v. *Thompson* (D.C. Mun. App. 1947, 55 A. 2d 142).

To warrant new trial in Municipal Court on ground of newly discovered evidence, evidence must be in fact newly discovered since trial, it must be shown that it was not due to want of diligence that movant did not discover evidence sooner, evidence relied on must not be merely cumulative or impeaching, and it must be such as would probably produce a different verdict if new trial were granted. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

Plaintiff was not entitled to new trial on ground of alleged newly discovered evidence, where affidavits in support of motion revealed incidents practically all of which had taken place in plaintiff's presence. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309). See, also, *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Fact that trial judge kept case, which had been submitted to him without jury, under advisement for some 13 months did not so taint finding as to require granting of new trial and refusal of new trial was not an abuse of discretion, notwithstanding that only a factual issue was involved. *Eberhard* v. *Mehlman* (D.C. Mun. App. 1948, 60 A. 2d 540).

An order granting a new trial was not a "final order", was not reviewable and dismissal of attempted appeal from such order was required. *De Grazia* v. *Anderson* (D.C. Mun. App. 1948, 58 A. 2d 306). See, also, *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Since judgment will not be entered until after a new trial is had, plaintiff cannot appeal from an order which is not a final order or judgment. An order made within the time limited by the rules and granting a new trial is not appealable, since the effect of the motion to reinstate the "judgment" was to test the validity of the grant of the new trial. A litigant is not allowed to do by indirection what he could not do directly. *Students Book Company* v. *Semerjian* (D.C. Mun. App. 1949, 66 A. 2d 487).

Where the chief reason given to support a motion for dismissal was a desire to file the suit anew and demand a jury trial on the ground that refusal to permit dismissal subjected her to material injury and deprived her of fundamental rights, the court did not abuse discretion in rejecting such motion when moving party failed to comply with the rule relating to jury trial. Failure to make timely demand therefor constituted a waiver thereof. *Mercer* v. *Equitable Life Insurance Society* (D.C. Mun. App. 1949, 65 A. 2d 207).

Counsel cannot be permitted to make the motion for new trial a vehicle for asserting objections retroactively or for grounding an appeal on a theory never presented during the trial. *Germaine* v. *Cramer* (D.C. Mun. App. 1949, 65 A. 2d 573).

Granting or denying a motion for a new trial is not an appealable order unless it is shown that the trial court has abused its discretion. *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 68 A. 2d 207).

Where defendant moved for a new trial for judgment notwithstanding verdict, trial court must act upon each, and granting of motion for judgment is not ground for summarily denying motion for new trial. *Crusade* v. *Capital Transit Co.* (D.C. Mun. App. 1949, 63 A. 2d 878). See, also, *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 68 A. 2d 207).

Where evidence was introduced and no announcement of suprise nor request made for any continuance or recess in order to make use of the evidence claimed to have been damaging to plaintiff's case, it cannot be said that the refusal of the trial court to set aside the judgment and award a new trial on the grounds of newly discovered evidence was an abuse of discretion. *Mutual Benefit Health and Accident Association* v. *McGinn* (D.C. Mun. App. 1950, 75 A. 2d 643).

The granting or denial of a motion for new trial based on newly discovered evidence is within descretion of trial court. *Kreis* v. *Block* (D.C. Mun. App. 1950, 75 A. 2d 523).

36. Motion to vacate sentence

Procedure for vacating sentence of prisoner twice sentenced by Juvenile Court of District of Columbia for non-support and claiming right to release for double jeopardy was not governed by U.S. Code, title 28 § 2255, relating to motion to vacate sentence of federal prisoner. *Burke* v. *United States* (D.C. Mun. App. 1954, 103 A. 2d 347).

37. Negligence Causing Death Act

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to $3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon* v. *Driggers* (D.C. Mun. App. 1956, 125 A. 2d 847).

38. New trial

Where it appears probable that a trial court has by comment invaded the fact finding function of the jury, particularly in a criminal case, a new trial ought to be awarded. *Prezzi* v. *U.S.* (D.C. Mun. App. 1948, 62 A. 2d 196).

While a new trial does not automatically follow every general reversal, such will ordinarily be the result. Where there is doubt as to what further proceedings are to be taken by the trial court after reversal, such doubt is generally resolved by granting a new trial. *Price* v. *Daime* (D.C. Mun. App. 1950, 71, A. 2d 608).

39. Notice of appeal

Where there had been a timely filing of a notice of appeal with clerk of the municipal court, municipal court thereafter lost jurisdiction and had no power to authorize a new trial during pendency of such appeal. *Morfessis* v. *Hollywood Credit Clothing Co.* (D.C. Mun. App. 1960, 163 A. 2d 825).

Appeal is perfected and Municipal Court of Appeals' jurisdiction attaches upon the timely filing of a notice of appeal with clerk of the municipal court and at the same time trial court loses jurisdiction over matter and may not thereafter reopen judgment. *Id.*

Where penalty imposed was less than $50 and defendant's right to review is by application for allowance of an appeal and not by notice of appeal, defendant's notice of appeal filed in the Municipal Court and not in the Municipal Court of Appeals could not be regarded as an "application for allowance of appeal". *Yeager* v. *District of Columbia* (1943, 33 A. 2d 629).

Where defendant took no action within the time limited for filing a notice of appeal, defendant's motion for leave of court to file notice of appeal was denied for want of jurisdiction to hear the appeal. *Beach* v. *District of Columbia* (D.C. Mun. App. 1946, 44 A. 2d 926).

Rules provide that notice of appeal in civil cases shall be filed with the clerk of the trial court within ten days of the date of the judgment or order appealed from. Such time limit is jurisdictional and may not be enlarged or extended either by the trial court or by this court. *Holland* v. *Eng* (D.C. Mun. App. 1950, 75 A. 2d 143).

The time for filing notice of appeal is jurisdictional and cannot be extended by the trial court or by this court. *Glenn* v. *Mindell* (D.C. Mun. App. 1950, 74 A. 2d 835).

Rules of this court make the filing of the notice of appeal jurisdictional. When such notice is filed out of time, court has no power to review the case. *Syndicated Construction Corp.* v. *Ross* (D.C. Mun. App. 1950, 73 A. 2d 899).

40. Orders reviewable

Waiver of jurisdiction over juvenile by juvenile court is not a "final order or judgment" appealable to municipal court of appeals. *M. A. Kent, Jr.* v. *C. Reid, Superintendent, etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

If district court should deny motion to dismiss indictment against juvenile made on ground of lack of jurisdiction because of want of full investigation by juvenile court before waiver of jurisdiction, order would be reviewable by Court of Appeals in event of ultimate conviction. *Id.*

Although order refusing to vacate default judgment is final and appealable, order vacating default judgment as general rule is not final and therefore not appealable. *E. Brenner* v. *A. E. Williams* (D.C. App. 1963, 190 A. 2d 263).

Where court vacates judgment after time within which it has power to do so, proceeding is beyond jurisdiction of court and is subject to appellate review. *Id.*

In action to recover personalty where on plaintiff's motion the trial court appointed a receiver of the records pending final disposition and defendant moved to vacate the order appointing the receiver, the appointment of the receiver "changed or affected" possession of the property and the order was reviewable though not final. *Bressler* v. *Bressler* (D.C. Mun. App. 1959, 155 A. 2d 255).

Under this section limiting jurisdiction of Municipal Court of Appeals for District of Columbia to hear appeals from interlocutory order to orders whereby possession of property is changed or affected, order denying motion to quash writ of attachment is not appealable. *Clark* v. *District Discount Co.* (D.C. Mun. App. 1959, 151 A. 2d 198).

To be appealable, an interlocutory order must be one which, if carried into effect, would change or affect possession by changing the status quo ante the order, under this section limiting jurisdiction of Municipal Court of Appeals for District of Columbia to review interlocutory orders to those orders whereby possession of property is changed or affected. *Id.*

Order overruling motion to quash service is not final and not appealable. *Id.*

An order denying a motion for summary judgment was not a final order or judgment and was therefore not appealable. *Moyer* v. *Moyer* (D.C. Mun. App. 1957, 134 A. 2d 649).

With certain exceptions, jurisdiction of Municipal Court of Appeals is limited to review of final orders and judgments. An order granting a new trial in automobile accident case was not a final order and not appealable, particularly, where claim was merely that trial court had improperly exercised its acknowledged authority. *Sellers* v. *Taylor et ano.* (D.C. Mun. App. 1955, 117 A. 2d 394).

Ordinarily an order vacating a default judgment is not final and is therefore not appealable, but when court vacates judgment after the time within which it has power to do so, vacating order is appealable. *Harco Inc.* v. *Greenville Steel and Foundry Co.* (D.C. Mun. App. 1955, 112 A. 2d 920).

An order refusing to vacate default judgment is final and appealable. *Id.*

Municipal Court of Appeals for the District of Columbia has jurisdiction to review only such orders as are final. *Heller* v. *Edwards, et al.* (D.C. Mun. App. 1954, 104 A. 2d 528).

Test of finality within this section is whether the order is one which disposes of the whole case, leaving nothing for court to do except to execute judgment it has rendered. *Id.*

Defendant's motion to stay proceedings in Municipal Court for the District of Columbia because of pendency of defendant's own suit against plaintiffs, based on same transaction or occurrence and filed in United States District Court subsequent to commencement of Municipal Court action, did not dispose of the action, but required that it be tried on the merits, and hence such order was not appealable. *Id.*

In suit in municipal court for District of Columbia for possession of realty, where question of title was interjected by defendant by attaching to his motion for a stay a copy of his complaint in district court for specific performance of alleged contract to purchase disputed property and such interjection was in violation of plaintiff's right to have title pleaded in method prescribed by statute, stay order of Municipal Court was appealable. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

Orders overruling motion to vacate order overruling a motion for summary judgment, overruling motion to dismiss, overruling motion for production of documents, and ordering plaintiff to file answer to counterclaim by specified date, were interlocutory matters and orders were not appealable. *Hankerson* v. *Tillman* (D.C. Mun. App. 1952, 88 A. 2d 191).

Where the trial court dismissed three separately stated counterclaims of defendant interposed in an action brought by plaintiff landlord for rent and water charges, but instead of amending or refusing to amend, defendant appealed from order of dismissal and also filed with trial court a stipulation, signed by counsel for both parties, extending time within which counterclaims might be amended to and including five days after disposition and termination of defendant's appeal, although trial court was not a party to stipulation, order was not an "appealable order". *McChesney* v. *Moore* (D.C. Mun. App. 1951, 78 A. 2d 389).

An order striking out item of damage from complaint and bill of particulars did not finally dispose of rights of the parties, and was not reviewable by the Municipal Court of Appeals for the District of Columbia. *Brown* v. *Randle & Garvin* (1943, 32 A. 2d 104).

An order striking out item of damage from complaint and bill of particulars was neither a "final order or judgment", nor an "interlocutory order whereby possession of property is changed or affected", within this section. *Id.*

An appeal taken during pendency of motion for new trial was subject to dismissal on ground that there was

no "final judgment". *Hamilton* v. *U.S.* (1943, 31 A. 2d 887, reversed on other grounds 140 F. 2d 679, 78 U.S. App. D.C. 316).

A judgment is not "final" and is not appealable while a motion for new trial, seasonably filed, remains undecided. *Id.*

Ordinarily trial court's action on motion for new trial is not subject to review on appeal unless there is shown a clear abuse of discretion. *Franklin* v. *Chas. C. Schulman Co.* (1943, 31 A. 2d 871).

Where matters raised by motion to set aside judgment and grant new trial could have been reviewed by timely appeal from the original judgment, action on such motion was not appealable. *Crowley* v. *Wood* (1943, 31 A. 2d 861).

Ruling on motion to vacate judgment rendered because of a party's default in appearing or pleading is not reviewable except for an abuse of discretion. *Ray* v. *Bruce* (1943, 31 A. 2d 693).

Order denying motion filed within term at which judgment was entered, to vacate default judgment against garnishee, is not an "appealable order." *Id.*

Where motion for new trial was granted after entry of verdict, there was no "final judgment" from which an appeal would lie until after a new trial was had. *Phillips* v. *Marvin's Credit* (D.C. Mun. App. 1944, 35 A. 2d 825).

Accused does not ordinarily have the right to an independent appeal from a ruling on a motion to quash a warrant of arrest. *U.S.* v. *Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

An order quashing a warrant of arrest in a disorderly house case was appealable. *Id.*

Granting or refusing a continuance is usually discretionary and not subject to review on appeal except when it is shown to have been an abuse of discretion. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

An appeal cannot be heard while motion for new trial is pending, since judgment at that time has not become final. *Hamilton* v. *U.S.* (1944, 140 F. 2d 679, 78 U.S. App. D.C. 316).

The jurisdiction of the Municipal Court of Appeals for the District of Columbia is limited to a review of final orders or judgments and interlocutory orders whereby possession of property is changed or affected. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696). See, also, *Crowder* v. *Lackey* (D.C. Mun. App. 1945, 44 A. 2d 223); *Lee* v. *Zentz* (D.C. Mun. App. 1946, 44 A. 2d 872).

An order of the Municipal Court for the District of Columbia, overruling defendant's motion to quash service, was an interlocutory order which did not change or affect possession of property, and order was not appealable to such court. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

An express desire of both parties for a decision on merits would not confer jurisdiction on the Municipal Court of Appeals for the District of Columbia of special appeals from interlocutory orders. *Id.*

Orders granting motion to amend complaint to include claim for overdue rent, overruling motion for summary judgment, granting motion to dismiss counterclaim without prejudice to right to file separate suit, and denying leave to amend counterclaim, were not "final orders" or "interlocutory orders affecting possession of property" from which appeal would lie to Municipal Court of Appeals. *Crowder* v. *Lackey* (D.C. Mun. App. 1945, 44 A. 2d 223).

An order granting a motion for new trial was not a "final order" and hence not appealable. *United Retail Cleaners and Tailors Ass'n of D.C.* v. *Denahan* (D.C. Mun. App. 1945, 44 A. 2d 69).

The "finality" of an order, necessary to jurisdiction of the Municipal Court of Appeals depends not upon its name, its propriety, or its normal function, but upon whether it disposes of the whole case on its merits so that the court has nothing to do but to execute the judgment or decree rendered. *Lee* v. *Zentz* (D.C. Mun. App. 1946, 44 A. 2d 872).

An order vacating a judgment, which left the case undecided with the right in plaintiff to proceed to trial and judgment, was "interlocutory" and not "final," and was not appealable to the Municipal Court of Appeals. *Id.*

Where plaintiff permitted time to lapse for taking appeal from order dismissing complaint before filing motion to amend complaint, plaintiff could not appeal from order denying motion to amend complaint, especially where it did not appear that there had been any abuse of discretion in refusing leave to amend. *Mitchell* v. *David* (D.C. Mun. App. 1946, 49 A. 2d 84).

A "final order" within this section is one that disposes of the whole case on its merits so that court has nothing to do but execute judgment or decree already rendered. *Whitman* v. *Noel* (D.C. Mun. App. 1947, 53 A. 2d 280).

Order denying defendant's motion for summary judgment on ground that it was apparent on face of claim that it was barred by statute of limitations was not an appealable "final order." *Id.*

An order denying a motion for rehearing of order denying motion to vacate judgment was not appealable. *Brooks* v. *Trigg* (D.C. Mun. App. 1947, 51 A. 2d 302).

District of Columbia Municipal Court's order overruling motion to dismiss or to remand action to District Court of United States for District of Columbia was not "final order" and hence was not appealable to Municipal Court of Appeals for District of Columbia. *Kaplowitz Bros.* v. *Kahan* (D.C. Mun. App. 1948, 59 A. 2d 795).

An order of Municipal Court vacating default judgment which had been entered "paid and satisfied" after execution through garnishment proceedings was appealable. *Campbell* v. *Campbell* (D.C. Mun. App. 1948, 58 A. 2d 825).

Record did not indicate that plaintiff was compelled to take a voluntary nonsuit because his request for a continuance and motion to dismiss without prejudice was denied so as to permit review of trial court's order on appeal since plaintiff could have submitted to the court's ruling and proceeded to trial and in case of an adverse judgment could have appealed. *Halpern* v. *Gunn* (D.C. Mun. App. 1948, 57 A. 2d 741).

Where in an interpleader action, judgment was rendered on the counterclaim in favor of the plaintiff, such judgment is not a final and appealable one because it did not decide all issues between the parties since the main action remained pending and unheard. *Weiss* v. *Young* (D.C. Mun. App. 1949, 64 A. 2d 309).

Where a motion to set aside a judgment was not filed within the time limited by the court's rule, the court was without jurisdiction to grant such relief. *Mike's Mfg. Company* v. *Zimzoris* (D.C. Mun. App. 1949, 66 A. 2d 414).

Where defendant moved to set aside a judgment on the ground that, through inadvertence, defendant's counsel failed to appear to defend and defendant had a good defense, the granting or denial of the motion rested in the sound discretion of the trial court. *Madden* v. *Horigan* (D.C. Mun. App. 1949, 66 A. 2d 525).

Where a judgment previously entered by defendant is reversed without further order, the mandate to that effect does not preclude any other affirmative action unless specifically so directed by the appellate court. The lower court is free to make any other order or direction in further progress of the case not inconsistent with the appellate decision. *Pyramid National Van Lines, Inc.* v. *Goetze* (D.C. Mun. App. 1949, 66 A. 2d 693).

Generally, an order denying a motion for rehearing, a motion for new trial or other like order is not an appealable order. However, where it is obvious that the appeal was intended to be from the order granting judgment, and appellee concedes that, because the motion for rehearing extended the time for appealing, the notice was timely filed even as to that order; the notice may be treated as an appeal from the judgment. *Diatz* v. *Washington Technical School* (D.C. Mun. App. 1950, 73 A. 2d 227, rehearing denied 73 A. 2d 718).

Trial court had power to vacate judgment where, in execution or judgment, the marshal had taken funds from the garnishee and was prepared to deliver them to the plaintiff since vacating such judgment prevented delivery subject to future order of the court. *Bridgett* v. *Perpetual Building Association* (D.C. Mun. App. 1950, 75 A. 2d 780).

It was beyond the power of the trial court to set aside the judgment where the motion to vacate came more than three months after the entry of the judgment and

hence was too late. *Breckenridge* v. *Mebane* and *Calvert Fire Insurance Company* v. *Mebane* (D.C. Mun. App. 1950, 75 A. 2d 441).

The imperative condition of equitable intervention in setting aside a judgment is that the party applying for it shall make it clearly apparent that he had a good defense to the action which, by fraud or accident, he was prevented from making, and also that there was neither fault nor negligence on his part. *Thomas* v. *Marvins Credit, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 773).

A default judgment by the court upon an amended complaint not served upon the defendant, though erroneous, is not void. *Id.*

Motion for summary judgment cannot be granted if the record discloses the existence of a genuine and material factual issue. *Rosenberg* v. *Ichcovitz* (D.C. Mun. App. 1950, 72 A. 2d 466).

Allowance or refusal of a motion to set aside a default is within the sound discretion of trial court. *Huff* v. *Kraft* (D.C. Mun. App. 1949, 63 A. 2d 667).

Mere denial of a preliminary injunction is not a final order and does not dispose of a case on its merits unless the order possesses sufficient attributes of finality or is in a form of an interlocutory order from which appeal lies. *Levy* v. *Arsenault* (D.C. Mun. App. 1949, 63 A. 2d 671).

It is clear that orders staying proceedings are not appealable. However, the reviewability of a final judgment or order is not affected by any consideration of form and a holding by a court that it is without jurisdiction to try a case is obviously final in its effect. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

41. Party aggrieved

For purpose of this section providing that any party aggrieved by any final order or judgment of Juvenile Court of District of Columbia may appeal therefrom, government is a "party aggrieved" by order dismissing case. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter was the real party in interest and "party aggrieved" by order of commitment within this section providing that any "party aggrieved" by final order of Juvenile Court may appeal therefrom to the Municipal Court of Appeals. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Where landlord sued for possession of office occupied by tenant, and tenant opposed the action but sought no affirmative relief, tenant was not an "aggrieved party" so as to be entitled to appeal from denial of his motion to dismiss notwithstanding court in dismissing without prejudice did not sustain all of tenant's contentions. *Koehne* v. *Harvey* (D.C. Mun. App. 1944, 39 A. 2d 871).

The successful party below cannot appeal. *Id.*

Appellant cannot question a ruling made by trial court favorable to him. *Glassman* v. *Graver* (D.C. Mun. App. 1948, 56 A. 2d 160).

42. Persons entitled to appeal

Government could appeal, as of right, from order, entered without authority, vacating judgment of conviction. *District of Columbia* v. *M. F. Bosley* (D.C. Mun. App. 1961, 173 A. 2d 218).

In landlord's actions against tenant for possession of rented building, subtenant, who was not a party, was not represented by amicus curiae and could not appeal from judgment for landlord to complain that parties failed to carry out stipulation with amicus curiae respecting trial. *Klein* v. *Liss* (D.C. Mun. App. 1945, 43 A. 2d 757).

An amicus curiae cannot take over management or control of a case, and cannot except to rulings of court or take an appeal. *Id.*

An amicus curiae must take case as he finds it, with issues made by the principal parties, and cannot raise new issues not made by parties litigant. *Givens* v. *Goldstein* (D.C. Mun. App. 1947, 52 A. 2d 725).

The general rule is that a person in a representative capacity, when prosecuting or defending an appeal, should be properly described in that capacity, but such rule is subject to the limitation that a designation is sufficient where the records show the representative capacity of the party, even if he is not so designated. *Niosi* v. *Aiello* (D.C. Mun. App. 1949, 69 A. 2d 57).

43. Postponement of time

A motion to vacate judgment postponed running of time for appeal until final action on the motion. *Ray* v. *Bruce* (1943, 31 A. 2d 693).

44. Presumption

In absence of congressional regulation of relations between laundries and their customers in District of Columbia, Municipal Court of Appeals would not assume right to prescribe terms upon which they may contract, since determination of public policy is primarily a legislative matter. *Manhattan Co.* v. *Goldberg* (D.C. Mun. App. 1944, 38 A. 2d 172).

In considering correctness of verdict for buyer who sued for seller's breach of warranty, appellate court must assume the truth of buyer's testimony regarding alleged statement by seller's representative. *Mars* v. *Herman* (D.C. Mun. App. 1944, 37 A. 2d 351).

On appeal from judgment for plaintiff, evidence was accepted in light most favorable to plaintiff. *Shapiro* v. *Vautier* (D.C. Mun. App. 1944, 36 A. 2d 349).

In determining whether wife was entitled to payment under a separation agreement, appellate court would assume that trial court, in determining amount to award as alimony and counsel fees, was influenced by the surrounding circumstances presented by the pleadings and evidence. *Cooper* v. *Cooper* (D.C. Mun. App. 1944, 35 A. 2d 921).

Error will not be presumed on appeal and must be shown affirmatively by party asserting it. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

The Municipal Court of Appeals takes judicial notice that many hundreds of petitions for adjustment of rent have been filed with and decided by Administrator under sections 45–1601 to 45–1611. *Gould* v. *Delsnider* (D.C. Mun. App. 1945, 42 A. 2d 140).

Discrepancies in plaintiff's testimony affected only weight of evidence, and reviewing court must assume that trial judge gave it such consideration as it deserved. *Heindrich* v. *Dimas-Aruti* (D.C. Mun. App. 1945, 42 A. 2d 138).

Judicial notice may not be extended to supply element of specific intent of depriving automobile owner of his property rights in mental processes of 3½-year-old child who entered unlocked automobile and caused it to start down hill. *Unkelsbee* v. *Homestead Fire Ins. Co. of Baltimore* (D.C. Mun. App. 1945, 41 A. 2d 168).

On plaintiff's appeal from trial court's decision on findings for defendant made by court sua sponte, plaintiff's evidence must be taken as true. *Merriam* v. *Sugrue* (D.C. Mun. App. 1945, 41 A. 2d 166).

Where trial court's charge was not included in record, Municipal Court of Appeals was required to assume that issues were properly submitted to jury. *Davis* v. *Bruno* (D.C. Mun. App. 1948, 57 A. 2d 828).

If a party has it within his power to produce witnesses whose testimony would elucidate transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable. But failure to produce such evidence can always be explained. *Woolard* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 640).

There is a strong presumption in the constitutionality of a statute, but where Supreme Court has spoken and found a statute unconstitutional, the presumption should be to the contrary. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

45. Procedure

Judgment of corporation court of Virginia, based upon a judgment of the municipal court of the District, is not open to collateral attack, the court having jurisdiction. *Edward Thompson Co.* v. *Thomas* (1931, 49 F. 2d 500, 60 App. D.C. 118).

By the 1921 act, appeals from the municipal court to the Supreme Court were abolished and the authority to issue statutory writ of certiorari should be denied when writ of error is provided. *United States ex rel. Eure* v. *Borden* (1936, 80 F. 2d 527, 65 App. D.C. 84).

Trial court had the right to waive the presumption against the testimony of defendant, an interested party, and in its discretion to conclude that the presumption outweighed the evidentiary value of the testimony. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

If the bailee fails to explain the damage, it leaves the trier of the facts free to draw an inference unfavorable to him upon the bailor's establishing the unexplained failure to deliver the goods safely. *Columbia Operating Corp.* v. *Kettler* (D.C. Mun. App. 1949, 67 A. 2d 267).

When a statutory presumption is met by some credible evidence, it becomes like an inference and when more than a single inference may be drawn from the evidence, then a question of fact is presented for jury determination. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company* (D.C. Mun. App. 1950, 72 A. 2d 254).

46. Purpose

In paternity suit, trial judge did not err in explaining to jurors the history and purpose of the act under which the proceedings were brought. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

47. Questions not raised below

In action between brokers for division of commission for sale of realty, contention urged by defendant for first time on appeal that plaintiff did not allege and prove that he was a duly licensed broker or salesman and that such failure was jurisdictional as relating to plaintiff's want of capacity to sue was unavailing for failure to raise contention in trial court. *McDevett* v. *Waple & James* (D.C. Mun. App. 1943, 34 A. 2d 39).

Counsel after gambling on jury's verdict and losing may not use motion for new trial as vehicle for asserting objections retroactively or for grounding an appeal on theory not presented during trial. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

Where defendant in automobile collision case made no motion for an instructed verdict and did not object to charge, questions as to sufficiency of evidence to support verdict and as to whether case was submitted on an erroneous theory of damages raised for first time in motion for new trial, could not be considered on appeal. *Id.*

Point which was not raised by the parties would not be considered on appeal. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

Questions neither raised nor considered in trial court and not presented or argued on appeal would not be passed on. *Kincade* v. *Wah* (D.C. Mun. App. 1944, 38 A. 2d 112).

The Municipal Court of Appeals cannot order reopening of case for consideration of point not made at trial in court below. *Group Health Ass'n* v. *Shepherd* (D.C. Mun. App. 1944, 37 A. 2d 749).

Where tenant holding over after expiration of lease did not challenge purchaser's title at trial of suit to recover possession of dwelling for personal use by purchaser as a residence nor object to plaintiff's testimony that she had purchased the dwelling or to various exhibits offered in support of such statements, tenant could not urge for the first time on appeal that plaintiff's deed should have been produced to prove ownership and that title of her grantor should have been established. *Miller* v. *Prophet* (D.C. Mun. App. 1944, 37 A. 2d 450).

A judgment should not be reversed and a new trial ordered to permit unsuccessful party to object to evidence received without objection at first trial or to try case upon some new and different theory. *Id.*

Objection, made for first time on appeal, that trial judge erred in causing or permitting trial to continue on without a recess past the dinner hour, was too late. *Shapiro* v. *Vautier* (D.C. Mun. App. 1944, 36 A. 2d 349).

Municipal Court of Appeals was not required to pass upon the validity of an interpretative order of the Administrator under the Emergency Rent Act, § 45–1601, et seq., where neither tenant nor landlord had sought a court review of such order. *Hall* v. *Henry J. Robb, Inc.* (D.C. Mun. App. 1944, 34 A. 2d 863).

The Municipal Court of Appeals for the District of Columbia must limit review to appealable orders or judgments though no objection is made. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

Where appellant acquiesced in ruling respecting interrogatories, appellant could not thereafter complain that there was an inconsistency because of jury's answer to an interrogatory which was mere surplusage. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

An objection to form of verdict which was not presented in trial court could not be advanced in appellate court. *Id.*

Where litigant acquiesced in charge when it was given, correctness of charge could not be questioned for first time on appeal. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 728).

Where plaintiff's counterclaim in amount of $3,000 was beyond jurisdiction of small claims branch of municipal court, Municipal Court of Appeals took cognizance of absence of jurisdiction even though question had not been raised before it or in the trial court and reversed case with instructions to vacate judgment and strike the counterclaim. *1425 F St. Corp.* v. *Jardin* (D.C. Mun. App. 1947, 53 A. 2d 278).

Where defendants did not allege contributory negligence and did not request trial court to instruct jury on that subject, assignment that trial court erred in refusing to sustain contention of defendants that evidence conclusively showed that any damage suffered by plaintiffs was due entirely to negligence of plaintiff came too late. *Gittleson* v. *Robinson* (D.C. Mun. App. 1948, 61 A. 2d 635).

An assignment of error in refusing to allow plaintiff to amend complaint cannot be considered, where record shows neither a request by plaintiff to amend nor denial by court of such request. *Higgins* v. *Dail* (D.C. Mun. App. 1948, 61 A. 2d 38).

Where defendant made no request for instructions and, in response to trial judge's inquiry upon completion of charge, did not object to those given, she could not complain on appeal of the instructions given. *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Where appellant made no request in the trial court for leave to amend, it cannot be said that the trial court was in error in not granting that which was not asked. *Watwood* v. *Credit Bureau, Inc.* (D.C. Mun. App. 1949, 68 A. 2d 905).

Counsel at jury trials must make their objections known while there is still opportunity for the trial judge to correct any apparent error. *Brown* v. *Haas* (D.C. Mun. App. 1950, 72 A. 2d 39).

Matters not raised and passed upon in the trial court afford no basis for review on appeal. *Brooks* v. *Jensen* (D.C. Mun. App. 1950, 73 A. 2d 32).

Where the record nowhere shows that the point was made before or at the time of trial, but seems to have been first advanced in the motion for new trial, it cannot be considered on appeal. *Glennon* v. *Butler* (D.C. Mun. App. 1949, 66 A. 2d 519).

Where appellant's answer did not raise an issue and no evidence in respect thereof is offered at the trial, such issue could not be raised upon appeal. *Dawson* v. *Fox* (D.C. Mun. App. 1949, 64 A. 2d 162).

The rule that points not raised in a trial court will not be considered on appeal is subject to the equally well recognized rule that if error vital to a defendant has been committed, it may be noted and corrected on appeal, notwithstanding the absence of objection and exception in the trial court. *Varrella* v. *United States* (D.C. Mun. App. 1949, 64 A. 2d 310).

It is fundamental that appellate courts sit to correct errors of trial courts, and that, save in exceptional cases, questions not presented to the trial court will not be considered on appeal. *Germaine* v. *Cramer* (D.C. Mun. App. 1949, 65 A. 2d 573).

Counsel cannot be permitted to make the motion for new trial a vehicle for asserting objections retroactively, or for grounding an appeal on a theory never presented during the trial. *Id.*

Where the defense of the statute of limitations was not made at the trial and appeared to have been raised for the first time in the motion for new trial, such defense was asserted too late. *Turner* v. *Bowman* (D.C. Mun. App. 1949, 68 A. 2d 231).

48. Questions of fact

Only in exceptional cases will questions of negligence, contributory negligence and proximate cause pass from

the realm of fact to one of law. Unless the evidence is so clear and undisputed that fair-minded men can draw only one conclusion, the questions are factual and not legal. *Lewis* v. *Shiffers* (D.C. Mun. App. 1949, 67 A. 2d 269).

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

If a conflict appears as to a material fact, the summary procedures does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true. *Messall* v. *Efron* (D.C. Mun. App. 1950, 72 A. 2d 694).

Factual issues are not to be tried or resolved by summary judgment procedure. Only the existence of a genuine and material factual issue is to be determined and once it is determined that there is such an issue, summary judgment may not be granted. *Id.*

Where broker contended that he secured suitable accommodations and seller arbitrarily refused to accept such accommodations a question of fact was presented. *Murphy* v. *O'Donnell* (D.C. Mun. App. 1949, 63 A. 2d 340).

49. Record

Where there was nothing in record on appeal by motorist from order of the Board of Commissioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. *Lambert* v. *Board of Commissioners of District of Columbia* (D.C. Mun. App. 1955, 116 A. 2d 926).

Where affidavits submitted to motions judge presented issue of fact as to defendant's availability for service of process and as to plaintiff's diligence in effecting such service, appellate court could not, in absence of record of oral testimony produced at trial on merits, hold that there had been an abuse of discretion in trial court's failure to sustain defenses, that claim was barred by limitations or by failure to prosecute, when such defenses were raised by motion to dismiss and at trial on merits. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

The reviewing court could not consider plaintiff's objections or particulars of objections to statement of proceedings and evidence or objections to substituted statement of proceedings and evidence, since they had no place in record and court was required to base its decision upon statement of proceedings and evidence as approved by trial judge. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

On review of ruling on motion for instructed verdict, court will not consider questions of mere weight or credibility of evidence, but will decide only its sufficiency to make a case for jury. *Yellow Cab Co. of D.C.* v. *Griffith* (D.C. Mun. App. 1945, 40 A. 2d 340).

Where, at time statement of evidence was prepared and approved, there was before trial court only specific assignment of error relating to admission of evidence, but thereafter supplemental statement of errors was filed claiming that verdict was contrary to the evidence and contrary to the law, appellate court would confine review to the specific error asserted in admission of evidence. *Lee* v. *U.S.* (D.C. Mun. App. 1945, 40 A. 2d 250).

Record failed to sustain defendants' contention that they were denied the privilege of argument of the case on the merits. *Zis* v. *Herman* (D.C. Mun. App. 1944, 39 A. 2d 65).

Where judgment, under rule that record imports absolute verity, would not have been disturbed upon showing made if attacked directly, judgment could not be disturbed on collateral attack predicated on errors in record. *Scholl* v. *Tibbs* (D.C. Mun. App. 1944, 36 A. 2d 352).

Appellate court could not hold as matter of law that trial court's refusal to compel streetcar company to produce motorman's report of accident in action against company for injuries sustained by passenger was not prejudicial to passenger, where contents of report were not disclosed. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

Where statement of proceedings and evidence did not set out substance of plaintiff's opening statement but on argument on appeal counsel had stenographic transcript thereof at counsel table and at instance of court filed it with clerk, it was properly before court for consideration. *Horne* v. *Ostmann* (D.C. Mun. App. 1944, 35 A. 2d 174).

In detinue in 1943 for household goods conditionally sold in 1934, where defendant pleaded limitations and discharge in bankruptcy in 1941, but record did not show terms of contract, price of goods, payments made, or dates when defendant abandoned part of goods, record was so inadequate that court could not say there was error in judgment for plaintiff, and hence judgment must be affirmed. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Appellate court may not reweigh conflicting evidence or override findings, except where it clearly appears they are manifestly wrong. *Pegues* v. *Wray* (D.C. Mun. App. 1945, 41 A. 2d 299).

Municipal Court of Appeals must accept record as it comes to court and cannot attempt to exercise functions of trial judge or reconstruct happenings at trial. *Levy* v. *Bryce* (D.C. Mun. App. 1946, 46 A. 2d 765).

The Municipal Court of Appeals could not consider as part of the record a birth certificate which was attached to defendant's brief on appeal, but was not in evidence in trial court. *Gray* v. *Droze* (D.C. Mun. App. 1947, 55 A. 2d 340).

Where trial judge rendered no formal opinion upon motion of defendant for jury trial but in a later case, when the same question was before the same judge, he rendered an exhaustive opinion, in which he recited his course of action in the first case, the Court of Appeals could not consider the opinion as part of the record in the first case but could consider it as a statement of the court's understanding of the law upon the point. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

In determining meaning and effect of municipal court's finding that plaintiff failed to prove amount of damages to which he was entitled, but might supply sufficient evidence to substantiate his claim on new trial, appellate court is confined to record on appeal from subsequent order denying plaintiff's motion to reopen and retry case after dismissal thereof without prejudice. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493).

Copies of a contract and a release appearing apparently as exhibits to a pleading, and copies of the contract and of a chattel mortgage attached to brief, could not be considered by reviewing court where it did not appear in the record that such papers were received in evidence. *Fabrizio* v. *Anderson* (D.C. Mun. App. 1948, 62 A. 2d 314).

Where a note appended to the statement of proceedings and evidence by trial court was in substance nothing more than a note addressed to appellate court reciting and interpreting some, but not necessarily all, of the reasoning process of the trial court, it is not a part of the record in the case below nor a part of the statement of the proceedings and evidence. Such a note has no place in the record on appeal and thus will be disregarded. *Martin* v. *Schlein* (D.C. Mun. App. 1950, 71 A. 2d 614).

Where assignment of error relates to the trial court's statement in the course of the trial that the interpretation of the contract would be left to the jury, court cannot say that this was error when the record does not make plain what the court meant by this ruling. Since the record does not contain the charge to the jury, it is impossible to tell whether the question was left to the jury, or, if so, in what manner this was done. *Ellis* v. *Morgan* (D.C. Mun. App. 1949, 65 A. 2d 797).

Where the record does not contain a transcript of testimony or a statement of proceedings in evidence or an agreed statement on appeal, appeal must be dismissed since an appeal must be decided on the record and not on the briefs. *Jaffe* v. *Sterrett Operating Services, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 780).

50. Remand

The remand for further proceedings is always made when the record does not enable the reviewing court to determine the rights for the parties. *Price* v. *Daime* (D.C. Mun. App. 1950, 71 A. 2d 608).

Where a judgment previously entered for a defendant is reversed without further order, the mandate to that effect does not preclude any other affirmative action unless specifically directed by the Appellate Court. *Id.*

51. Remarks of court

Where claimant assigns as error, alleged statements made by trial court which he believed reflected on him as a lawyer, but which were made out of the presence of the jury and could not have affected the jury, it was harmless; moreover, since the case properly terminated in a directed verdict, it is doubly clear that even if the remarks were erroneous they were not prejudicial. *Glover* v. *Jewish War Veterans of United States* (D.C. Mun. App. 1949, 68 A. 2d 233).

52. Remittitur

Urging an appeal that appellate court should reinstate the first verdict and order such remittitur as it deemed proper to remove the excess of the verdict is without merit. In federal jurisdictions, the practice seems to be limited to contract cases and the like where the excess amount of the verdict can be fairly well determined. No case in the federal jurisdiction has been called to court's attention where an appellate court undertook to cure by remittitur an excessive verdict rendered in a court action for unliquidated damages. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

53. Reversal

Where overtaking streetcar struck automobile which had been stopped because way was obstructed by motorist making left turn, in action against streetcar company for damage to the overtaken automobile finding that streetcar was not negligently operated was plainly wrong, requiring reversal of judgment. *MacDonald, to Use of Emmco Ins. Co.* v. *Capital Transit Co.* (D.C. 1943, 31 A. 2d 862).

Where under evidence nominal damages only could be allowed, failure to award such damages was no ground for reversal. *Lee* v. *Dunbar* (D.C. Mun. App. 1944, 37 A. 2d 178).

A reversal benefits only those who have appealed. *Gibson* v. *Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

Statement of proceedings and evidence is not necessary on appeal where a question of law arises upon the face of the record, but where parties are properly before the court, pleadings state a case, and judgment conforms to pleadings, matters which arise during progress of trial cannot be reviewed unless record includes such portion of the evidence and proceedings as must be considered in determining whether trial court's rulings were correct. *Moncure* v. *Curry* (D.C. Mun. App. 1945, 42 A. 2d 143).

Exclusion of testimony of a witness who did not hear the entire conversation was reversible error, where it appeared that such testimony, according to the proffer of proof went to the heart of the controversy and the witness should have been permitted to testify as to how much of the conversation he heard. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Question of whether accident was proximately caused by negligence of appellee's driver, and of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D.C. Mun. App. 1949, 62 A. 2d 797).

Ordinarily appellate court must accept as correct the statement properly settled and approved by a trial judge. Appeals court cannot undertake to settle disputes between court and counsel as to what happened in court below. However, where there are inadequacies and inconsistencies plainly apparent in the transcript and where the judge himself acknowledged on the record that he has deleted substantial portions of defendant's evidence on the merits of the case from the narrative statement, the defendant is entitled to a reversal. *Smith* v. *District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 766).

The Court of Appeals is reluctant to overrule a decision of a Trial Court resting in the field of discretion but where it interferes with a trial on the merits, slight abuse of discretion in refusing to set aside a default judgment is sufficient to justify a reversal of the order. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

It was reversible error to exclude entries made in the accounts receivable ledger regarding credit transactions of a client to prove that such client was operating as a partnership since such ledger sheet was admissible under the Federal Shop Book Rule as a record made in the regular course of business. *Orndorff* v. *Cohen* (D.C. Mun. App. 1949, 62 A. 2d 794).

54. Right to counsel

Where prosecution involves a matter of serious moral turpitude but there is no appeal as a matter of right to Municipal Court of Appeals because penalty imposed is less than $50, indigent defendant is entitled to aid of counsel in preparing application for leave to appeal. *Wildeblood* v. *United States* (1959, 273 F. 2d 73, U.S. App. D.C.).

55. —— Nonsuit

Under rule 37(a) of the Municipal Court, plaintiffs have lost their right to a nonsuit or voluntary dismissal after defendant's answer has been filed, since beyond that point an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. *Mercer* v. *Equitable Life Insurance Society* (D.C. Mun. App. 1949, 65 A. 2d 207).

56. Scope of review

It is not function of Municipal Court of Appeals for the District of Columbia to determine whether finding of trial court on an issue of fact is right or to justify the finding. *T. L. Ashley* v. *M. M. Ashley* (D.C. Mun. App. 1962, 179 A. 2d 905).

Whether husband was father of child born to his wife after they had been separated and lived apart for several years was an issue depending essentially on credibility to be accorded to parties and was a matter entirely within province of trial court. *Id.*

In action to recover balance due under rent assignment contract, where issue was whether defendant or corporation of which he was an officer was liable, and evidence was such that either one of the two different conclusions might reasonably have been drawn from it, Municipal Court of Appeals did not have appellate jurisdiction to substitute its own findings and to reverse judgment for defendant. *Nolan* v. *Werth* (1944, 142 F. 2d 9, 79 U.S. App. D.C. 33).

Where evidence is such that either one of two different conclusions might reasonably be drawn from it, the decision is for the trial court and its judgment must stand, and appellate court may not reweigh the evidence or override the findings, except where it clearly appears that they are manifestly wrong. *Id.*

Board of Examiners and Registrars of Architects was not bound to accept registrant's testimony that he did not know his Maryland registration had been revoked when he gave negative response to question as to whether any of his registration certificates had ever been revoked; and, on record presented, Board could reasonably find that his response had been false. *Stone* v. *Board of Examiners and Registrars of Architects* (D.C. Mun. App. 1956, 126 A. 2d 157).

The Municipal Court of Appeals cannot read out of an appeal case extensive testimony offered by plaintiff or assume that only defendant's evidence is worthy of belief. *Keefe* v. *Moskin Stores* (D.C. Mun. App. 1953, 95 A. 2d 336).

The District of Columbia Municipal Court of Appeals cannot pass on credibility of witnesses nor weigh their testimony. *Gensberg* v. *Kritt* (D.C. Mun. App. 1951, 83 A. 2d 588).

Tenants' surrender of possession constituted a voluntary compliance with the judgment for landlord in landlord and tenant proceeding, rendering case moot and leaving no question for determination on appeal. *Baugh* v. *Young* (D.C. Mun. App. 1944, 39 A. 2d 478).

The Municipal Court of Appeals cannot weigh evidence or pass upon the credibility of witnesses or override trial court findings which are supported by substantial evidence. *Zis* v. *Herman* (D.C. Mun. App. 1944, 39 A. 2d 65). See, also, *Rossiter* v. *National Sav. & Trust Co.* (D.C. Mun. App. 1946, 46 A. 2d 540).

Where evidence is such that either one of two different conclusions might reasonably have been drawn from it, the decision is for the Municipal Court, and the Municipal Court of Appeals cannot reweigh the evidence or override findings of municipal Court unless manifestly wrong. *Weimann* v. *Sheppard* (D.C. Mun. App. 1944, 37 A. 2d 847).

In broker's action for commissions, where the evidence was conflicting and would support a judgment for either party, the Municipal Court of Appeals could not override decision of Municipal Court who saw and heard the witnesses, although more witnesses testified for defendants than for plaintiff. *Id.*

The Municipal Court of Appeals for the District of Columbia cannot act as triers of fact, but must leave to the trial court questions of weight of evidence and credibility of witnesses. *Yellow Cab Co. of District of Columbia, Inc.* v. *Sutton* (D.C. Mun. App. 1944, 37 A. 2d 655).

An appellate court may not reweigh the evidence or override the trial court's findings except where it clearly appears they are manifestly wrong. *Id.*

Municipal Court of Appeals, on reviewing a case, does not try the facts and will not choose among uncertain and conflicting inferences or direct contradictions in the evidence. *Meade* v. *Kane Transfer Co.* (D.C. Mun. App. 1944, 36 A. 2d 567.)

A judgment as result of an erroneous exercise of power is reversible only by an appellate court, while a judgment as result of usurpation of power may be declared a nullity collaterally. *Scholl* v. *Tibbs* (D.C. Mun. App. 1944, 36 A. 2d 352).

Where separate actions by depositor's widow and brother against bank were consolidated for trial, on brother's appeal from judgment for bank, merely on basis of such consolidation, Municipal Court of Appeals could not review judgment for widow against bank from which bank did not appeal. *Gibson* v. *Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

In determining whether there was probable cause justifying issuance of a warrant of arrest in a disorderly house case, reviewing court was not called upon to determine whether the offense charged had in fact been committed but was concerned only with question whether the affiant had reasonable ground at the time of the affidavit and issuance of the warrant for belief that the law was being violated. *U.S.* v. *Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

The District of Columbia Municipal Court of Appeals cannot reweigh evidence to resolve doubts arising from question of credibility of witnesses. *Perlman* v. *Chal-Bro., Inc.* (D.C. Mun. App. 1945, 43 A. 2d 755).

Where evidence was such that in statutory proceeding for trial of right of property either one of two different conclusions might reasonably be drawn therefrom, trial court's judgment could not be disturbed by Municipal Court of Appeals. *Id.*

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

The Municipal Court of Appeals cannot reweigh evidence or override findings. *Lindquist* v. *Steele* (D.C. Mun. App. 1945, 42 A. 2d 925).

Municipal Court of Appeals cannot weigh the evidence, and in jury cases is limited in its review to matters of law. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 2d 728).

The decision of Municipal Court on conflicting evidence cannot be disturbed. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

On appeal from municipal court's order denying plaintiffs' motion to reopen and retry case after dismissal thereof without prejudice pursuant to finding that plaintiffs failed to prove amount of damages to which they were entitled, but might supply sufficient evidence to substantiate their claim on new trial, appellate court need not determine whether record discloses adequate evidence of damages. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493).

Defendant's oral statement of intention to appeal in open court within time limited by Municipal Court Rule 27(b) for filing notice of intention to appeal would not be construed as notice of intention to appeal from sentences imposed on pleas of guilty in addition to sentences imposed on pleas of not guilty. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1948, 58 A. 2d 309).

Qualification of an expert is primarily for trial court and will not ordinarily be reviewed on appeal, but where facts are not in dispute, a reviewable question of law is presented. *Fraser* v. *Crounse* (D.C. Mun. App. 1948, 56 A. 2d 54).

From a study of the record, appellate court was satisfied it had no right to say that the judgment below was plainly wrong, for it was obvious that evidence supported such judgment. Since this is the standard fixed by the statute creating the court, rule must be followed and appellate court had no right to reweigh evidence or to override findings of the trial court. *Watwood* v. *Bradford* (D.C. Mun. App. 1950, 72 A. 2d 41).

Appellate court unable to say as matter of law that trial court, which tried the case without a jury, was plainly wrong in holding that the accident was caused by the negligence of defendant or his employee and that plaintiff was not guilty of contributory negligence. While court might have reached a contrary conclusion had it been the triers of the facts, appellate court could not say that the conclusion of the trial court was not supported by substantial evidence. *Columbia Operating Corp.* v. *Kettler* (D.C. Mun. App. 1949, 67 A. 2d 267).

An argument that a verdict is not supported by the evidence raises no question for an appellate court when it brings up for review no ruling by the trial court. As defendants did not object to the case going to the jury or to the instructions under which it was submitted, they cannot now assert that there was no case for the jury's consideration or that the jury should have been instructed otherwise. *Johnson* v. *Kupper* (D.C. Mun. App. 1949, 67 A. 2d 265).

One cannot take his chance on a favorable verdict, reserving a right to impeach it if it happens to go the other way. Where the point now made was raised in the motion for a new trial, such motion cannot be used as a vehicle for asserting objections retroactively or for grounding an appeal on a theory not advanced at trial. *Id.*

Appellant's criticism of the method of computing interest adopted by the judge is unfounded, where such method was more favorable to appellant than the method for which his counsel contends. *Sloan* v. *Sloan* (D.C. Mun. App. 1949, 66 A. 2d 799).

Review by this court is limited to final orders or judgments and interlocutory orders whereby the possession of property is changed or affected, and a stay order was not final because it did not determine the merits of the controversy. *Bradley* v. *Triplex Shoe Company* (D.C. Mun. App. 1949, 66 A. 2d 208).

The rule is well established that where no controversy remains except as to costs, an appellate court will not pass upon the merits. *Holmes* v. *Floyd E. Davis Company* (D.C. Mun. App. 1949, 66 A. 2d 212).

If counsel had other questions he wished to ask witnesses, or another line of inquiry he wished to pursue, he should have indicated to the trial court the nature of the questions or inquiry in order that the court make a specific ruling. In the absence of such ruling, there is no showing of prejudicial error. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

On the merits there was ample evidence to support the general finding of the trial court and therefore trial court was correct in making no ruling as to the applicability of the principle of res ipsa loquitur. *Endy* v. *Baltimore and Ohio Railroad Company* (D.C. Mun. App. 1950, 73 A. 2d 514).

The rule is that the inquirying party is concluded by the witness' answer when cross-examination relates to a matter collateral to the issue, and he may not later rebut it for purposes of impeachment. The test of

whether or not a matter of fact inquired of in cross-examination is collateral is: Would the cross-examining party be entitled to prove it as a part of his case? If so, it is not collateral, otherwise it is. *Kelly* v. *United States* (D.C. Mun. App. 1950, 73 A. 2d 232).

Trial Court's finding of fact is conclusive on this appeal in view of conflicting evidence, but it will not be conclusive in the new trial which will be necessary because of an error as to a matter of law. *Keith* v. *Berry* (D.C. Mun. App. 1949, 64 A. 2d 300).

Where no showing of fraud, duress, or mistake is made at the trial, courts have no right to relieve parties to contracts merely because certain provisions may operate disadvantageously to them. *Simm* v. *Bovee* (D.C. Mun. Ap. 1949, 68 A. 2d 800).

Where the parties are properly before the court, and pleadings state a cause of action, and the trial court's judgment conforms to the pleadings, it must be assumed, in the absence of a statement of proceedings and evidence, that the evidence presented was sufficient to support the verdict and judgment. *Wilkins* v. *Woodruff* (D.C. Mun. App. 1950, 74 A. 2d 59).

The finality of an order depends not upon its name, its propriety or its normal function, but upon whether it disposes of the whole case on its merits so that nothing remains to be done except execution of a judgment or decree. *Levy* v. *Arsenault* (D.C. Mun. App. 1949, 63 A. 2d 671).

Appellate court has no power to weigh the evidence and therefore cannot consider that the verdict was contrary to the evidence or weight of the evidence. *Hooper* v. *Smith* (D.C. Mun. App. 1950, 72 A. 2d 466).

Action on a discretionary matter, such as motion for continuance as a result of illness, is reversible where the error in its exercise is plainly shown, and worked material hardship and injustice. *Etty* v. *Middleton* (D.C. Mun. App. 1948, 62 A. 2d 371).

Where purchaser sought no judgment against the third party defendant and broker, the broker could not appeal from the judgment against the seller. Therefore on appeal from the judgment of the seller against the broker, the court has no authority to review the judgment of the purchaser against the seller from which no appeal was taken. *Murphy* v. *O'Donnell* (D.C. Mun. App. 1949, 63 A. 2d 340).

Jurisdiction of the subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and objection thereto may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

57. Small claims court appeals

Review of a judgment of the Small Court Branch of the Municipal Court for the District of Columbia may be had only by the allowance by the Municipal Court of Appeals of an application for appeal. *Marvins Credit, Inc.* v. *General Motors Corp.* (D.C. Mun. App. 1956, 119 A. 2d 447).

58. Statement of proceedings and evidence

The reviewing court cannot decide disagreements between trial court and counsel as to occurrences at trial, but must generally accept as correct the statement of proceedings and evidence, properly settled and approved by trial judge. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

An appeal from conviction was not dismissible because notice of appeal was prematurely filed before motion for new trial was disposed of, where the motion was thereafter overruled and appellant filed a statement of errors claimed which assigned as one error the denial of the motion. *Hamilton* v. *U.S.* (1944, 140 F. 2d 679, 78 U.S. App. D.C. 316).

When statement of proceedings and evidence is submitted to trial court, the court must approve statement if accurate or, if not, must assist in making it accurately reflect the trial proceedings, and should not approve an incomplete or inaccurate statement. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Appellate court could not pass on alleged error of trial court in holding that evidence did not establish the authority of an agent in absence of a statement of proceedings and evidence. *Moncure* v. *Curry* (D.C. Mun. App. 1945, 42 A. 2d 143).

District Court of Appeals cannot decide cases on basis of disputed facts as they appear in briefs of the parties but must be governed by recitals in statement of proceedings and evidence approved by trial court. *King* v. *McKnight* (D.C. Mun. App. 1948, 61 A. 2d 714).

Where appellant apparently had a stenographic report made of evidence at trial in municipal court but did not bring it before reviewing court as permitted by rules, reviewing court was required to rely on statement of proceedings and evidence certified by trial judge. *De Bobula* v. *Winston* (D.C. Mun. App. 1948, 57 A. 2d 742).

Where the record is not a stenographic transcript of testimony but is a narrative statement of proceedings and evidence approved by the trial court, appellate court and the parties are bound by that statement. Counsel has no right and ought not to attempt to supplement or contradict the record by statements in a brief. *Bovello* v. *Falvey Granite Co.* (D.C. Mun. App. 1950, 71 A. 2d 536).

The contention that the trial court erred in not granting new trial on account of newly discovered evidence is without foundation where the only reference to such evidence is in the statement made in the motion for new trial. This is not sufficient to justify trial court in granting new trial and certainly does not warrant appellate court in so holding. *Turner* v. *Bowman* (D.C. Mun. App. 1949, 68 A. 2d 231).

A transcript of the proceedings below or a statement of proceedings and evidence are not required where an error of law is shown to exist upon the face of the record. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

Facts agreed to by the petitioner's counsel, which did not appear in the examiner's statement of evidence or any other evidentiary form in the record and bearing no approval or certification of the rent administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D.C. Mun. App. 1949, 63 A. 2d 333).

59. Sufficiency of evidence

Conclusion of trial judge sitting without jury that considertaion for note was discharge of a valid debt owed by maker's brother and not duress and fear was neither plainly wrong nor without evidence to support it. *J. K. Morgan* v. *G. Gilmer* (D.C. App. 1964, 200 A. 2d 83).

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *Eiland* v. *Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

60. Summary judgment

In an action for malicious prosecution, even if supporting affidavits are true and complete statements relating to defendant's connection with the criminal proceeding, it may be that plaintiff has no cause of action, but on motion for summary judgment, court cannot indulge in such an assumption. Moreover, a party cannot be compelled to try his case on affidavits without the benefit of cross-examinations. *Milstead* v. *W. P. Ballard and Company, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 589).

61. Supersedeas bond

In action to recover rented premises for breach of condition, failure of tenant to furnish a supersedeas bond did not waive the right of appeal. *Quick* v. *Paregol* (D.C. Mun. App. 1948, 61 A. 2d 407).

62. Suspension of sentence, appeal after

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas* v. *United States* (D.C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding this section providing that where penalty imposed is less than $50 review shall be by application. *Id.*

63. Third party practice

Where third party defendants were not served with notices of the motion for summary judgment, such a defendant was deprived of no rights by such failure to serve notice and cannot complain; and court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

64. Time for appeal

The time in which to appeal from an order of the Juvenile Court commences to run anew each time the court exercises its continuing jurisdiction and renders what is up to that point, barring the granting of a new petition by an interested party, a final order. *In the Matter of Cecelia Lem* (D.C. Mun. App. 1960, 164 A. 2d 345).

All that is required on an appeal from a Juvenile Court order is that the party aggrieved appeal within the time allowed from an order which purports to be final. *Id.*

Where a mother's motion for rehearing in regard to custody of her child presented new material for the court's consideration which had not been before it previously, the court properly exercised its continuing jurisdiction, and mere fact that the court refused to amend a previous order did not mean that the time to appeal commenced to run from the date of the previous order, but rather the time in which the appeal commenced to run was from the date of denial of the mother's motion for rehearing. *Id.*

The time for appeal commenced to run from denial of defendants' motion for rehearing of their motion to vacate a judgment taken against them without service of process or appearance by them, and the filing of a motion to reconsider denial of the motion for rehearing did not stop the running of such time. *De Foe* v. *National Capital Bank of Washington* (D.C. Mun. App. 1952, 90 A. 2d 242).

An order denying motion to set aside judgment was not appealable where the motion was filed more than two months after the judgment and the appeal was taken more than four months after the judgment. *Union Provision & Distributing Corp.* v. *Thomas J. Fisher & Co.* (D.C. Mun. App. 1946, 49 A. 2d 85).

The reviewing court cannot extend time for appeal from Municipal Court beyond 10 days after judgment. *Brooks* v. *Trigg* (D.C. Mun. App. 1947, 51 A. 2d 302).

Where appeal on face of record appeared to be too late but trial court certified a supplemental record showing that on appellant's motion to correct the record by having it show that judgment purporting to be entered on certain date was not in fact entered until a subsequent date, trial court found that date of entry of judgment was within 10 days of filing of notice of appeal, appeal would not be dismissed. *Corbett* v. *Urciolo* (D.C. Mun. App. 1947, 54 A. 2d 577).

The time for filing notice of appeal is jurisdictional and cannot be extended by trial or appellate court. *Id.*

A motion, filed long after expiration of time for appeal from judgment, to strike or vacate judgment, must be considered as unseasonably filed and treated as collateral attack on judgment. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493). See, also, *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1948, 58 A. 2d 309, 60 A. 2d 700, remanded on the grounds 172 F. 2d 281, 84 U.S. App. D.C. 232, certiorari denied 70 S. Ct. 135, 338 U.S. 874, 94 L. Ed. 115, rehearing denied 70 S. Ct. 245, 338 U.S. 901, 94 L. Ed. 200).

Where defendant failed to file written notice of appeal within time limited therefor by Municipal Court Rule 27(b) but did within such period give oral notice of intention to appeal in open court, the oral notice would be held to be a substantial compliance with such rule, so that defendant's right of appeal from conviction on charges to which he had pleaded not guilty, was not lost. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1948, 58 A. 2d 309, 60 A. 2d 700, remanded on other grounds 172 F. 2d 281, 84 U.S. App. D.C. 232, certiorari denied 70 S. Ct. 135, 338 U.S. 874, 94 L. Ed. 115, rehearing denied 70 S. Ct. 245, 338 U.S. 901, 94 L. Ed. 200).

65. Unassigned errors

A point not made in defendant's motion for new trial or assigned as error on appeal presented nothing for review. *Sherman* v. *U.S.* (D.C. Mun. App. 1944, 36 A. 2d 556).

66. Waiver of errors

Any error in refusing to grant defendant's motion for a directed verdict at close of Government's case was waived when defendant proceeded to offer evidence in his behalf. *Boyer* v. *U.S.* (D.C. Mun. App. 1945, 40 A. 2d 247, reversed on other grounds, 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

The rule in class B actions requires that any person desiring a jury trial shall file an answer accompanied by a jury demand, and where appellant filed neither an answer nor a demand for jury trial, such right was waived. *Clark* v. *General Electric Credit Corp.* (D.C. Mun. App. 1950, 72 A. 2d 43).

Where motion was made at close of plaintiff's evidence for a directed verdict and, upon its denial, defendants proceeded to present evidence on their behalf, they thereby waived benefit of their motion. Since the motion was not renewed at the close of all the evidence there is no basis for this claim of error. *Brooks* v. *Jensen* (D.C. Mun. App. 1950, 73 A. 2d 32).

Where the explanation of plaintiff's counsel was that he forgot to strike two names from the jury panel and after the trial court refused to remove these two jurors on the ground that the objection came too late, and opposing counsel offered to consent to the removal of the two jurors and try the case with a jury of ten, which was refused, the objection, even if valid, came too late. *Glover* v. *Jewish War Veterans of United States* (D.C. Mun. App. 1949, 68 A. 2d 233).

When the motion to dismiss was heard and appellant argued the merits of the motion and did not object to proceeding with the hearing because of the pendency of another motion to set aside the default, such conduct constituted a consent to the hearing of the motion to dismiss and a waiver of the right to insist that the motion to set aside the default be disposed of first. *Raimonde* v. *Purcell* (D.C. Mun. App. 1949, 68 A. 2d 678).

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. *Gross* v. *Utilities Engineering Institute* (D.C. Mun. App. 1950, 75 A. 2d 363).

67. Withholding entry pending appeal

To avoid the labor and expense of filing application for allowance of an appeal in all of several cases, which were controlled by one common question of law, resort could be had to the practice of filing application for appeal in one case, and withholding entry of final judgment in the others upon stipulation that action therein abide the results of the single appeal. *Yeager* v. *District of Columbia* (D.C. 1943, 33 A. 2d 629).

68. Witness, competency

The question as to competency of a child as a witness is one primarily for trial judge, whose decision will not be disturbed on appeal unless shown to be clearly erroneous. *Posey* v. *U.S.* (D.C. Mun. App. 1945, 41 A. 2d 300).

The testimony of an infant may be excluded in toto on grounds of incompetency, but once he is allowed to testify, the uncertainty of his evidence goes only to its weight and does not disqualify such testimony. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

69. Writ of mandamus

The traditional use of the writ of mandamus in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Where, if an order is not promptly and effectively rescinded, petitioner may lose his security and suffer irreparable damage, the situation justifies a writ of mandamus requiring trial court to vacate its order setting aside a judgment. *Mike's Mfg. Company* v. *Zimzoris* (D.C. Mun. App. 1949, 66 A. 2d 414).

70. —— Prohibition

Though the act creating the Municipal Court of Appeals does not expressly give the court power to issue a writ of prohibition or any of the extraordinary writs, since the court is expressly authorized to hear and determine appeals and to regulate all matters relating to such appeals, it has implied an inherent power to issue extraordinary writs in aid of its appellate jurisdiction and such a writ

may issue even though no appeal has been noted or is pending. *Mike's Mfg. Company* v. *Zimzoris* (D.C. Mun. App. 1949, 66 A. 2d 414).

§ 11–742. Administrative orders and decisions.

(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of Appeals has exclusive jurisdiction to review the following orders and decisions of administrative agencies of the District:

(1) decisions of the Board of Pharmacy refusing to renew a license to practice pharmacy or refusing to renew a permit to lead in poisons for use in the arts or as insecticides pursuant to section 2–606;

(2) decisions of the Board of Examiners in Veterinary Medicine revoking or suspending a license to practice veterinary medicine or a branch thereof pursuant to section 2–810;

(3) orders of the Commissioners of the District of Columbia or their agent or decisions of the Commissioners denying, revoking, or suspending a motor-vehicle operator's permit pursuant to section 40–302;

(4) decisions of the Board of Examiners and Registrars of Architects annulling or revoking a certificate to practice architecture pursuant to section 2–1028;

(5) orders of the Commissioners of the District of Columbia denying, revoking, or suspending a license for a private employment agency pursuant to section 47–2101;

(6) decisions of the Commission on Licensure to Practice the Healing Art in the District of Columbia denying a license or a registration to practice the healing art pursuant to section 2–129;

(7) decisions of the Nurses' Examining Board denying registration or reregistration of a nurse or school of nursing pursuant to section 2–406;

(8) decisions of the Board of Barber Examiners revoking or refusing to issue, renew, or restore a certificate of registration as a registered barber or barber apprentice pursuant to section 2–1110;

(9) final decisions of the Real Estate Commission of the District of Columbia denying an application for license or suspending or revoking a license pursuant to sections 45–1403 to 45–1418; and

(10) final orders of the Public Service Commission of the District of Columbia under the provisions of the District of Columbia Securities Act.

(b) A party aggrieved by an order or decision specified by subsection (a) of this section may obtain a review thereof in the District of Columbia Court of Appeals.

(c) Upon the filing of a written petition for review praying that an order or decision specified by this section be set aside, the District of Columbia Court of Appeals has jurisdiction of the proceeding. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88–241, § 1; Aug. 30, 1964, 78 Stat. 633, Pub. L. 88–503, § 7.)

Reference in Text

The District of Columbia Securities Act is set out in title 2, chapter 24.

Amendment

1964—Section 17 of act Aug. 30, 1964, amended the section by striking out "and" at the end of paragraph 8; changing the period at the end of paragraph 9 to a semicolon and inserting "and" and adding paragraph 10 thereto.

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section is derived from subsec. (e), and the first sentence and part of the fifth sentence of subsec. (f), of section 11–772 of D.C. Code, 1961 ed.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

In addition to the jurisdiction conferred by these provisions, the District of Columbia Court of Appeals has jurisdiction to review orders of the Rent Control Administrator for the District. See section 45–1609 of the D.C. Code, 1961 ed.

For remainder of section 11–772 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence 1
Misrepresentation 2

1. Evidence

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresentation, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

Appellant had burden of proving that judgment was plainly wrong or without evidence to support it. *G. W. Knight et ano.* v. *E. Sarboy etc., et al.* (D.C. Mun. App. 1961, 174 A. 2d 194).

2. Misrepresentation

Record on review by Municipal Court of Appeals sustained decision of Real Estate Commission suspending petitioner's license as a real estate broker on the grounds that she had made a substantial misrepresentation and had demonstrated such unworthiness to act as broker as to endanger interests of the public. *D. B. Quander* v. *The Real Estate Commissioners of the District of Columbia* (D.C. Mun. App. 1962, 179 A. 2d 386).

In reviewing ruling of Real Estate Commisson suspending broker's license, Municipal Court of Appeals was bound to credit testimony adverse to license holder. *Id.*

[See also, Notes To Decisions under § 11–741]

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–761. Contempt powers.

The District of Columbia Court of Appeals, or a judge thereof, may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding $50 or imprisonment not exceeding 30 days. (Dec. 23, 1963, 77 Stat. 486, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–774 (Apr. 1, 1942, ch. 207, § 9, 56 Stat. 196; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is derived from subsec. (b) of section 11–744 of the D.C. Code, 1961 ed. For remainder of section 11–774, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

§ 11–762. Oaths, affirmations and acknowledgments.

Each judge, the clerk, and each deputy clerk of the court may administer oaths and affirmations and take acknowledgments. (Dec. 23, 1963, 77 Stat. 486, Pub. L. 88–241, §1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–771 (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398).

Section is derived in toto from last paragraph of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of that section in this revised part, see tables.

Chapter 9.—DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–901. Continuation of court—Court of record—Divisions—Seal.
11–902. Composition—Appointment, qualifications, tenure, salaries, and oath of judges—Removal.
11–903. Administration by chief judges—Discharge of duties.
11–904. Designation and assignment of judges—Sessions.
11–905. Absence, disability, or disqualification of chief judge.
11–906. Vacations for judges.
11–907. Meetings and reports.
11–908. Clerks for judges—Compensation.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

11–931. Clerk—Compensation—General duties.
11–932. Deputy clerks and other employees—Compensation—Supervision—Process—Powers.
11–933. Probation officer—Compensation, powers and duties.
11–934. Assistant probation officers and other employees—Compensation—Supervision.
11–935. Reporters' fees for transcripts.

SUBCHAPTER III.—JURISDICTION

11–961. Civil jurisdiction.
11–962. Transfer of civil actions to Court of General Sessions.
11–963. Criminal jurisdiction—Commitment.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

11–981. Power of judges to issue warrants returnable to Criminal Division—Record.
11–982. Compelling attendance of witness—Contempt powers—Subpoenas.
11–983. Oaths, affirmations and acknowledgments.
11–984. Receipt and care of deposits for costs, and fees—Payment of fines, costs, etc., to clerk—Deposit—Accountng.
11–985. Audit of accounts.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–901. Continuation of court—Court of record—Divisions—Seal.

(a) The District of Columbia Court of General Sessions shall continue as a court of record in the District. The court shall consist of a civil division and a criminal division.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751, 11–751a, 11–752, 11–755 (Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 25, 1949, ch. 706, §1, 63 Stat 887; Apr. 11, 1956, ch. 204, § 103(a), 70 Stat. 112; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Aug. 24, 1962, Pub. L. 87–596, § 1(a), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–751, the second paragraph of section 11–752, and part of the first sentence of subsec. (a) of section 11–755 of D.C. Code, 1961 ed. For remainder of sections 11–752 and 11–755, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1963, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11–751 of D.C. Code, 1961 ed., provided: "The Police Court of the District of Columbia and the Municipal Court of the District of Columbia, be, and they are hereby, consolidated into a single court to be known as 'The Municipal Court for the District of Columbia'" This language is omitted as executed and obsolete, and in its place subsec. (a) of this section merely continues the court (now the Court of General Sessions) so created in the consolidation of the two former courts.

The terms "civil division" and "criminal division" are substituted for reference in the first sentence of section 11–755(a) of D.C. Code, 1961 ed., to "criminal" and "civil branches", to conform with designations used elsewhere in that same section. See, also, the preliminary rule preceding Section I of Part I of the Civil Rules, and Rule 1 of the Criminal Rules of the Court. The Civil Division, in addition to its regular civil branch, has a Small Claims and Conciliation Branch, a Domestic Relations Branch, and, although apparently not designated by statute, a Landlord and Tenant Branch. See other provisions in this Part, and Part I, Sections II—IV, of the above-cited Court rules.

Changes are made in phraseology.

CROSS REFERENCES

Accounts audited, see § 11–985.

Attachment proceedings, see § 16–533.

Challenged ballots, appeal from decision of Board of Elections, see § 1–1109.

Claim against attached property, see §§ 15–522—15–524.

Costs, see §§ 15–711 and 15–712.

Domestic Relations Branch, see § 11–1101 et seq.

Forcible entry and detainer, see §§ 11–735 to 11–739.

Interest, see § 15–131.

Judgments and executions, see § 15–131.

Registration of voters, appeal from decision of Board of Elections, see § 1–1107.

Replevin actions, see §§ 16–3731 et seq.

Trial of right to attached property, see § 15–521.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Court of record

The Municipal Court of the District of Columbia created by Congress under this chapter is a court of record and, within the limits of its civil jurisdiction which is far in excess of that of the old municipal court, has equitable jurisdiction. *Paley* v. *Solomon* (1945, 59 F. Supp. 887).

Municipal Court is a court of record and its judgments have full effect (except as liens on real estate) without docketing in District Court. The express power of a court of record to enforce its judgment by proper process should not be abridged by courts in absence of express or implied statutory authority. *Halperin* v. *Cohen* (D.C. Mun. App. 1949, 67 A. 2d 295).

§ 11–902. Composition — Appointment, qualifications, tenure, salaries, and oath of judges—Removal.

(a) The District of Columbia Court of General Sessions shall consist of a chief judge and fifteen associate judges appointed by the President of the United States, by and with the advice and consent of the Senate.

(b) A person may not be appointed as a judge of the court unless he:

(1) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the city of Alexandria, Virginia, and has maintained an actual place of abode in the area for at least five years prior to his appointment; and

(2) has been a member of the bar of the District of Columbia for a period of at least five years, and, for a period of at least five consecutive years immediately prior to his appointment, either has been actively engaged in the practice of law or has been employed as an attorney in the District in the government of the United States or in the government of the District of Columbia.

(c) Each judge shall be appointed or reappointed for a term of ten years each, which terms shalls be staggered as heretofore provided for; and he shall continue in office until the appointment and qualification of his successor.

(d) The chief judge shall receive an annual salary of $24,000, and each associate judge shall receive an annual salary of $23,500.

(e) Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(f) A judge may be removed only in the manner and for the causes provided for the removal of Federal judges. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–246, § 306(i)(3).)

AMENDMENT

1964—Section 306(i)(3) of act Aug. 14, 1964, amended subsection (d) by striking out $18,000 and inserting $24,000 and by striking out $17,500 and inserting $23,500.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

REVISIÓN NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–752, 11–753 (Apr. 1, 1942, ch. 207, §§ 1, 2, 56 Stat. 190, 191; July 28, 1949, ch. 369, § 2, 63 Stat. 482; Oct. 25, 1949, ch. 706, §§ 1–3, 63 Stat. 887; July 11, 1955, ch. 302, § 2, 69 Stat. 290; Apr. 11, 1956, ch. 204, § 103(a), 70 Stat. 112; Aug. 24, 1962, Pub. L. 87–596, § 1(a), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates the first paragraph of section 11–752 and section 11–753 of D.C. Code, 1961 ed. Remainder of section 11–752 is carried into section 11–901 of this title.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The words in section 11–753 of D.C. Code, 1961 ed., "or who shall have been a judge of one of the courts of the District of Columbia * * *: *Provided, however,* That not more than two nonresident persons may be appointed and serve as judges of the said Municipal Court at any one time", which followed the residence requirement, constituted a temporary provision, and are omitted from this section as obsolete.

Section 1 of act Apr. 1, 1942, ch. 207, 56 Stat. 190, contained a third paragraph which was not set out in section 11–751 or 11–752 of D.C. Code, 1961 ed. (to which the other provisions of that section were classified), because of later enactments increasing the number of judges on the Municipal Court (now, Court of General Sessions), and in the case of the act of Oct. 25, 1949, ch. 706, § 1, cited above, providing that appointments and reappointments with respect to the additional judges authorized by that act (3 more than the original 10) should be for terms of 10 years each. However, section 1 of the 1942 act (and section 2 thereof, which is carried into this section), in providing for the appointment of the original 10 judges, did set the pattern for staggered terms. The third paragraph of section 1 provided that the terms of the original 10 judges should be in accordance with the following schedule: the first 2 appointments, 10 years; the second 2 appointments, 6 years. It further provided that the judges of the Police Court and of the first Municipal Court (which that act merged to establish the second Municipal Court) holding office on the effective date of that act (judges of the Police Court held office for 6 years, and judges of the first Municipal Court held office for 4 years) should, however, serve as judges of the second Municipal Court until the expiration of their respective commissions and until their successors were appointed and qualified. Section 2 of the 1942 act provided that subsequent appointments and reappointments to the second Municipal Court should be for terms of 10 years each, and, as stated, section 1 of the act of Oct. 25, 1949, ch. 706, in increasing the number of judges from 10 to 13, provided that appointments and reappointments with respect to the 3 additional judges should be for 10 years each. Section 103(a) of act Apr. 11, 1956, ch. 204, cited above, amended the 1949 act to increase the total number from 13 to 16, without further reference to tenure. Because of the lapse of time since the original enactments, and the completion of the original staggered terms, the provisions in subsec. (c) of this section are substituted for all prior provisions that related to tenure.

Changes are made in phraseology and arrangement.

§ 11–903. Administration by chief judge—Discharge of duties.

The chief judge of the District of Columbia Court of General Sessions shall administer generally and superintend the business of the court. He shall give his attention to the discharge of the duties especially pertaining to his office and to the performance of such additional judicial work as he is able to perform. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–783, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section is derived from the third sentence of subsec. (a) and all of subsec. (b) of section 11–754 of D.C. Code, 1951 ed. For remainder of section 11–754, see tables.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Recall of retired judges to service, see § 11–1701.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence 1
Fees of witnesses and jurors 2
Judge pro tem 3
Power to take testimony 4
Reduction of sentence 5

1. Evidence

Statements, made by defendant at coroner's inquest after warning that any statements made could be used against him in any subsequent proceeding, were properly used at subsequent trial for impeachment purposes. *Neely* v. *U.S.* (1944, 144 F. 2d 519, 79 U.S. App. D.C. 177, certiorari denied 65 S. Ct. 83, 323 U.S. 754, 89 L. Ed. 604).

2. Fees of witnesses and jurors

When witnesses and jurors are summoned by a lawful officer they are compelled to obey the writ and are entitled to their fees, advanced by the coroner, even though the inquest was unlawful. *Levy Court* v. *Woodward* (1864, 69 U.S. 501, 2 Wall. 501, 17 L. Ed. 851).

3. Judge pro tem

Judge pro tem was not disqualified from passing sentence because regular judge returned between time of trial and date set for sentencing. *Shore* v. *Splain* (1919, 258 F. 150, 49 App. D.C. 6).

4. Power to take testimony

A coroner may take testimony of probable defendants if it is given voluntarily after advice as to their rights and, in so doing, coroner does not act as a prosecuting officer, but sits in a quasi-judicial capacity. *Neely* v. *U.S.* (1944, 144 F. 2d 519, 79 U.S. App. D.C. 177, certiorari denied 65 S. Ct. 83, 323 U.S. 754, 89 L. Ed. 604).

5. Reduction of sentence

Municipal Court of District of Columbia had power to reduce sentences during term at which they were imposed. *Peden* v. *Fleming* (1946, 153 F. 2d 800, 81 U.S. App. D.C. 2).

Where Municipal Court of District of Columbia imposing sentence in August, 1942, directed that its term then current be kept open, the court could not extend the August, 1942, term until September 3, 1943, and could not at that time reduce sentences imposed more than a year before. *Id.*

Where order of probation was void because entered after defendant had been committed, release of defendant under the probation order was premature and it was duty of court to cause him to be recommitted, and the void probation order did not amount to an unconditional reduction of sentence. *Id.*

§ 11–904. Designation and assignment of judges—Sessions.

(a) The chief judge of the District of Columbia Court of General Sessions shall, from time to time and for such periods as he determines designate the judges to preside in and attend the divisions and several branches and sessions of the court. He may:

(1) except as provided by sections 11–1103 and 11–1303, determine the number and fix the time of the various sessions of the court; and

(2) arrange the business of the court, and divide it and assign it among the judges.

Each associate judge shall attend and serve at the division, branch, or sessions of the court to which he is assigned.

(b) When the chief judge of the District of Columbia Court of Appeals finds it in the public interest to do so, he may designate and assign a judge of that court to act temporarily as a judge of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 754, 11–771, 11–771a (Apr. 1, 1942, ch. 207, §§ 3, 6, 56 Stat. 191, 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates the first two sentences of subsec. (a) of section 11–754 the first sentence of the second paragraph of subsec. (c) of section 11–754, and the seventh sentence of the sixth paragraph of section 11–771 of D.C. Code, 1961 ed. For remainder of sections 11–754 and 11–771, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions; and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

§ 11–905. Absence, disability, or disqualification of chief judge.

When the chief judge of the District of Columbia Court of General Sessions is absent, disabled, or disqualified, his duties shall devolve upon and be performed by the associate judges of the Court according to the order of seniority of their commissions. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived, with changes in phraseology, from the fourth paragraph of subsec. (c) of section 11–754 of the D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

§ 11–906. Vacations for judges.

Each judge of the District of Columbia Court of General Sessions is entitled to vacation, not to exceed thirty-six court days in a calendar year, to be taken at times determined by the chief judge. (Dec. 23. 1963, 77 Stat. 488, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived, with changes in phraseology, from the fifth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

§ 11–907. Meetings and reports.

(a) The judges of the District of Columbia Court of General Sessions shall meet together at least once each month for the consideration of those matters pertaining to the administration of justice in the court which may be brought before them. The chief judge shall fix the times for the meetings.

(b) Each associate judge shall submit to the chief judge a monthly written report, in a form prescribed

by the chief judge, of the duties performed by him, specifying:

(1) the number of days attendance in court of the judge during the month covered;

(2) the branch courts upon which he attended;

(3) the number of hours per day of his attendance; and

(4) such other data as the chief judge requires.

(c) The chief judge shall submit to the Attorney General of the United States and to the Commissioners of the District of Columbia a quarterly written report of the business of the court and of the duties performed by each judge of the court during the preceding three months. A copy of the report shall be filed in the office of the clerk of the court and shall be available and subject to public inspection during business hours. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from the first paragraph, the second sentence of the second paragraph, and the fourth paragraph of section 11–754(c) of the D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology and arrangement.

§ 11–908. Clerks for judges—Compensation.

Each judge of the District of Columbia Court of General Sessions may appoint and remove a personal clerk and shall fix his compensation in accordance with the Classification Act of 1949, as amended. (Dec. 23, 1963, 77 Stat. 488, Pub L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 2, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from that part of the seventh paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., that was not carried into section 11–932 of this revision. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

§ 11–931. Clerk—Compensation—General duties.

(a) The District of Columbia Court of General Sessions may appoint and remove a clerk, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

(b) In addition to performing any other duties prescribed by law, rules of court, or order of the chief judge, the clerk of the Court of General Sessions shall keep such dockets and records and perform such other duties as the court prescribes. Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–713, 11–714, 11–751a, 11–754 (Mar. 3, 1901, ch. 854, § 38, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates section 11–713 and section 11–714 with the sixth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court formed from the 1942 merger of courts referred to below) to the District of Columbia Court of General Sessions.

Sections 11–713 and 11–714 of D.C. Code, 1961 ed., related to the clerk of the first Municipal Court prior to its merger, in 1942, with the Police Court to form the second Municipal Court. Section 11–713 provided that the clerk should keep a docket and described in detail the entries to be made in the docket (which, considering the jurisdiction of the first Municipal Court, related only to civil causes). The Court of General Sessions (successor to the second Municipal Court) has a civil division and a criminal division, and the civil division has several branches. Further, section 11–1122 requires that a separate docket be kept for the Domestic Relations Branch of the civil division. The sixth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., provided that the clerk should "have and exercise the powers and authority heretofore had or exercised by the clerk of the Police Court of the District of Columbia and the clerk of the Municipal Court of the District of Columbia" (the first Municipal Court), but it made no reference to "duties" as distinguished from "power" or "authority". It would seem that the duties of the clerk, with respect to the keeping of dockets and records and to other matters not covered by law, are now prescribed by the court (except in the case of the Domestic Relations Branch, which, as stated, is required by law to keep a separate docket). See the Civil Rules of the court, rules 77 and 78, and the Criminal Rules thereof, rule 4. Therefore, subsec. (b) of this section provides merely that, in addition to performing any other duties prescribed by law, rules of court, or order of the chief judge, the clerk of the court shall keep such docket and records and perform such other duties as may be prescribed by the court.

The provision in the sixth paragraph of section 11–754(c) of D.C. Code, 1961 ed., that the clerk of the Municipal Court (established by the merger of the two former courts) should have and exercise the powers and authority theretofore had or exercised by the clerks of the two former courts is omitted as unnecessary.

The last paragraph of section 11–713 of D.C. Code, 1961 ed., provided as follows: "And it shall be his duty to furnish a copy of any judgment rendered by him when required by either party to the action. If he shall omit to keep such docket or be guilty of any other negligence or omission whereby the plaintiff, having obtained a judgment before him, shall lose his debt, the clerk shall pay and satisfy to the plaintiff the debt, interest, and costs so lost, to be recovered in an action of debt against said clerk and his surety or sureties, with any additional interest that may have accrued". These provisions are omitted. As originally enacted in 1901, they related to justices of the peace. The act of Feb. 17, 1909, ch. 134, 35 Stat. 625, in redesignating the justice of the peace courts as the Municipal Court, made provision for the appointment of a clerk and provided that he should "keep a docket similar to the one heretofore provided for justices of the peace", but there is nothing therein to indicate that the duties, responsibilities, and liabilities prescribed in the quoted paragraph were transferred to the clerk. In any event, the first sentence of the paragraph relates to a matter which could, and, if necessary, should, be covered by court rule. As for the second sentence, it is believed to be obsolete. Like its predecessor (the second Municipal Court), the Court of General Sessions, as contradistinguished from the former justice of the peace court, is a court of record.

For remainder of section 11–754 of D.C. Code, 1961 ed., see tables.

§ 11–932. Deputy clerks and other employees—Compensation—Supervision—Process—Powers.

(a) Subject to the approval of the chief judge, the clerk of the District of Columbia Court of General Sessions may appoint and remove such deputy clerks and other employees of the court as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with the Classification Act of 1949, as amended.

(b) The deputies and employees appointed under subsection (a) of this section shall be under the supervision and direction of the clerk.

(c) In all civil actions in the Court of General Sessions, process shall be signed by the clerk or deputy clerks in the name of the court. The deputy clerks may sign the name of the clerk to any official act required by law or by practice of the court to be performed by the clerk. In such case, the signature shall be: "————————— —————————, Clerk, by ————————— —————————, Deputy Clerk". (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–711, 11–151a, 11–754 (Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191, Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962; Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates section 11–711 of D.C. Code, 1961 ed., which related to the clerk and "assistant clerk" of the first Municipal Court (merged in 1942 with the former Police Court to form the second Municipal Court), with part of the seventh paragraph of subsec. (c) of section 11–754 thereof. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Muncipal Court for the District of Columbia, which was formed from the 1942 merger referred to above, to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Issuance of warrants 1
Stamped signature 2

1. Issuance of warrants

No authority to issue a warrant of arrest was conferred upon the clerk and deputy clerk of the police court of the District of Columbia. The section merely provided that they should have power to administer oaths and affirmations. *Zerega* v. *United States* (1929, 32 F. 2d 963, 59 App. D.C. 67).

2. Stamped signature

In landlord's action for possession of realty, where chief deputy clerk personally placed a facsimile of her signature on the summons by means of a stamp, the summons was valid since it was "signed" within this section. *McGrady* v. *Munsey Trust Co.* (D.C. 1943, 32 A. 2d 106).

§ 11–933. Probation officer—Compensation, powers and duties.

The District of Columbia Court of General Sessions may appoint and remove a probation officer of the court, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

The probation officer shall exercise such powers and perform such duties as may be prescribed by law. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from the eighth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provision of the eighth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., that the probation officer shall "have and exercise the powers and authority heretofore had or exercised by the probation officer of the Police Court of the District of Columbia" is omitted as unnecessary. The powers and duties of probation officers are set out in general terms in section 24–102 of D.C. Code, 1961 ed. In place of the omitted provision, the second paragraph of this section provides that the probation officer shall exercise such powers and perform such duties as may be prescribed by law.

Changes are made in phraseology.

§ 11–934. Assistant probation officers and other employees—Compensation—Supervision.

Subject to the approval of the chief judge, the probation officer of the District of Columbia Court of General Sessions may appoint and remove such assistant probation officers and other employees of the probation office as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with the Classification Act of 1949, as amended.

The probation officer shall supervise and direct the assistants and employees so appointed. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from the ninth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

The final (tenth) paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., provided: "All officials and employees of the Police Court of the District of Columbia and of the Municipal Court of the District of Columbia holding office on the effective date of this subchapter [which merged the Police Court and the former Municipal Court to form the second Municipal Court] shall continue in office unless and until they are removed therefrom; and all appropriations for the said Police Court or the said Municipal Court shall be available for the payment of the salaries and expenses of The Municipal Court for the District of Columbia as hereby established". This paragraph is omitted as obsolete. Further, a separate section in the bill to enact this Part provides for continuance in office of present incumbents for the balance of their terms unless or until removed.

§ 11–935. Reporters' fees for transcripts.

In addition to their annual salaries, official reporters for the District of Columbia Court of General Sessions may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the court. The official reporters shall furnish all supplies at their own expense. The court shall prescribe such rules,

practice, and procedure pertaining to fees for transcripts as it deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of the court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754b (July 18, 1947, ch. 267, 61 Stat. 381; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171).

Section is derived from section 11–754b of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District Court of General Sessions.

Changes are made in phraseology.

SUBCHAPTER III.—JURISDICTION

§ 11–961. Civil jurisdiction.

(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of General Sessions has exclusive jurisdiction of civil actions, including civil actions against executors, administrators and others fiduciaries, in which the claimed value of personal property or the debt or damages claimed does not exceed the sum of $10,000, exclusive of interest and costs, as well as of all crossclaims and counterclaims interposed in all actions over which it has jurisdiction, regardless of the amount involved.

It does not have jurisdiction of:

(1) cases involving title to real property, except as provided in section 11–1141;

(2) actions against judges of the Court of General Sessions or other officers for official misconduct; or

(3) counterclaims, crossclaims, or any other claims whether or not arising out of the same transaction or occurrence and interposed in actions over which the United States District Court for the District of Columbia has jurisdiction.

(b) Within the limits of its jurisdiction provided by subsection (a) of this section, the Court of General Sessions has jurisdiction of cases of trespass upon or injury to real property. If the defendant, in such a case, files with the court an affidavit that he claims title to the property, setting forth the nature of his title, the court may not take further cognizance of the case.

(c) The Court of General Sessions has jurisdiction over all civil cases properly pending in the Municipal Court for the District of Columbia on January 1, 1963. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–704, 11–751a, 11–755, 11–755 note (Mar. 3, 1901, ch. 854, §§ 9, 10, 31 Stat. 1191; Feb. 17, 1901, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates that part of subsec. (a) of section 11–755 of D.C. Code, 1961 ed., relating, as amended by the act of Oct. 23, 1962, to civil jurisdiction of the District of Columbia Court of General Sessions, with section 704 of the Code, which related to civil jurisdiction of the first Municipal Court (before that court was merged with the Police Court by the act of Apr. 1, 1942, to form the second Municipal Court), and with acts Mar. 3, 1901, ch. 854, § 9, 31 Stat. 1191; Feb. 7, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310, which were set out as a note under section 11–755 of D.C. Code, 1961 ed., and with (the 1901 and 1921 acts) collectively also related to civil jurisdiction of the first Municipal Court.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia, which was the court formed from the 1942 merger mentioned above, to the District of Columbia Court of General Sessions.

After its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., in addition to providing for the jurisdiction carried into subsec. (a) and the limitation carried into subsec. (a)(3) of this section, provided that the Court of General Sessions and the judges thereof shall "have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Municipal Court for the District of Columbia or the judges thereof". This provision is omitted as no longer necessary inasmuch as provisions of law prescribing civil jurisdiction of the first Municipal Court, that were not covered or superseded by the provisions of section 11–755 (prior to the 1962 amendment or by other provisions of the act of April 1, 1942, relating to jurisdiction of the second Municipal Court, have been revised to relate to the Court of General Sessions or the judges thereof and are carried into this revision.

In addition to the provisions carried into subsec. (a)(1)(2) of this section (limiting the jurisdiction), acts Mar. 3, 1901, ch. 854, § 9, 31 Stat. 1191; Feb. 7, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310 (D.C. Code, 1961 ed., § 11–755 note), which related to the first Municipal Court, provided that it have exclusive jurisdiction in civil cases in which the claimed value of personal property or the debt or damages claimed, exclusive of interest and costs, did not exceed $1,000, as follows: in all civil cases in which the amount claimed to be due for debt or damages arose out of contracts, express or implied, or damages for wrongs or injuries to persons or property, including all proceedings by attachment or in replevin, and in cases for the recovery of damages for assault and battery, slander, libel, malicious prosecution, and breach of promise to marry. These provisions are omitted as superseded and covered by the broader provisions of section 11–755(a) of D.C. Code, 1961 ed., relating to the Court of General Sessions, that are carried into subsec. (a) of this revised section.

Subsec. (b) of this section is derived from section 11–704 of D.C. Code, 1961 ed., which related to the first Municipal Court. It is carried into this section on the authority of section 11–755(a) of D.C. Code, 1961 ed., under which, prior to the amendment thereof by the act of Oct. 23, 1962, the Municipal Court for the District of Columbia assumed the jurisdiction of the two former courts (Police Court and first Municipal Court), and, after the 1962 amendment, the Court of General Sessions assumed, as stated above, the jurisdiction of the Municipal Court for the District of Columbia. As herein set out, subsec. (b) relates to the Court of General Sessions.

Changes are made in phraseology.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

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1. Action to possess realty

The action of trespass to realty contemplated by this section is one for damages, and it was not applicable to give Municipal Court for District of Columbia jurisdiction of action to obtain possession of realty. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

The District of Columbia Municipal Court has jurisdiction to try actions involving possession of realty. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400, modified on other grounds, 54 A. 2d 144).

2. Accounting

In suit for an accounting where the claim was to recover $1,000 held in trust, the Municipal Court for District of Columbia had jurisdiction of the action and possessed the necessary equitable powers to give complete relief. *Shulman* v. *Shulman* (D.C. Mun. App. 1952, 86 A. 2d 527).

3. Administrators, actions against

Municipal court does not have jurisdiction over suits against an administrator for the debt of the decedent, for judgment for full amount of debt. *Sanford* v. *Sanford* (1943, 286 F. 777, 52 App. D.C. 315).

Under this section, Municipal Court for District of Columbia had jurisdiction to entertain suit against administrator for unpaid balance of note executed by deceased. *Mazo* v. *Ed. L. Stock, Inc.* (D.C. Mun. App. 1943, 31 A. 2d 660).

4. Affirmative defenses

The defense of the statute of frauds is an affirmative defense and must be pleaded. *Saunders System Washington Co.* v. *Kuffner* (D.C. Mun. App. 1950, 75 A. 2d 136).

5. Amount claimed

The United States District Court for the District of Columbia had no jurisdiction over a discharged employee's claim against employer that he was discharged in violation of collective bargaining agreement where amount in controversy was less than $3,000, as smaller claims were within exclusive jurdisction of Municipal Court for the District of Columbia. *United Electrical, Radio and Machine Workers of America, etc.* v. *General Electric Co.* (1955, 231 F. 2d 259, 77 U.S. App. D.C. 306, certiorari denied 77 S. Ct. 95, 352 U.S. 872, 1 L. Ed. 2d 76).

Where, in last full year of discharged employee's employment, most of his time was spent on union work for which he was not paid by company, and his earnings from company were only $618.51, and his company earnings would not have been larger in future, and $6,000 life insurance contract which he had taken through company could be continued by him after termination of employment through private contract with insurer, such discharged employee's claim against company for alleged wrongful discharge was not within jurisdiction of United States District Court for District of Columbia. *Id.*

In action to enjoin union from expelling member, where member who was employed in a union shop and might be discharged by his employer for nonmembership in union, was earning $137.25 per week, and had life expectancy of about 30 years, and his expulsion from union would carry Communist stigma, value of matter in controversy was in excess of $3,000 exclusive of interest and costs, and case was within jurisdiction of District Court. *Friedman* v. *International Association of Machinists* (1955, 220 F. 808, 95 U.S. App. D.C. 128, certiorari denied 76 S. Ct. 51, 350 U.S. 824, 100 L. Ed. 736).

Municipal Court of the District of Columbia does not have exclusive jurisdiction over civil actions in which the claimed value of personal property involved or damages claimed exceed the sum of $3,000, exclusive of interest and costs. *Id.*

In determining if value of matter in controversy in a case is sufficient for jurisdictional requirements of federal court, absolute certainty as to value is not essential and present probability that damages will exceed the sum is enough. *Id.*

The actual damages recoverable being for a sum within the exclusive jurisdiction of the municipal court, the District Court had no jurisdiction, and a mere ad damnum clause did not confer it. *Minick* v. *Associates Inv. Co.* (1940, 110 F. 2d 267, 71 App. D.C. 367).

Suit for $1,000 as damages for negligence was in exclusive jurisdiction of municipal court and as writ of error was available the judgment could not be reviewed by certiorari to the District Court. *United States ex rel. Eure* v. *Borden* (1936, 80 F. 2d 527, 65 App. D.C. 84).

Municipal court acted within its jurisdiction when it entered judgment for landlord and could enter judgment on tenant's undertaking to secure a stay of execution on a review of a judgment by writ of error even though judgment was for more than $1,000. *Bailey* v. *Allen E. Walker, Inc.* (1925, 2 F. 2d 123, 55 App. D.C. 74).

District Court for District of Columbia did not have jurisdiction of action to have trust impressed on funds amounting to $1,980 or, in alternative, for money judgment, regardless of whether complaint would have formerly been denoted a suit at law or a bill in equity, in view of this section giving Municipal Court exclusive jurisdiction of "civil actions" involving "personal property" having value less than $3,000. *Klepinger* v. *Rhodes* (1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, certiorari denied 64 S. Ct. 1047, 322 U.S. 734, 88 L. Ed. 1568).

Suits in which the alleged value of personal property or debt or damages claimed does not exceed $3,000 are in exclusive jurisdiction of Municipal Court for the District of Columbia. *Rowe* v. *Nolan Finance Co.* (1944, 142 F. 2d 93, 79 U.S. App. D.C. 35).

The District Court had jurisdiction of action by administrator for balance due on compensation award to plaintiff's decedent although amount owing at time of decedent's death was lass than $3,000. *Turner* v. *Christian Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D.C. 333).

Where proprietor of restaurant operated in California under a trade name had expended over $200,000 in advertising during a 12 year period and he claimed that he had built up trade name until it had a nationwide or even international reputation, and primary relief sought by proprietor was a permanent injunction against use of trade name by defendant, which operated restaurant in District of Columbia under same name, value of right sought to be protected against interference exceeded $3,000 and Municipal Court for District of Columbia did not have jurisdiction of action. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Where landlord's complaint was in three counts, the first claiming rent at $3,000, the second claiming damages for waste of $780, and third making same claim for waste against third party, and when question of jurisdiction was raised landlord dismissed with prejudice the second and third counts, and trial proceeded on first count alone

trial court was not without jurisdiction on theory that action claimed an amount in excess of $3,000. *Beck* v. *Troiano* (D.C. Mun. App. 1958, 138 A. 2d 492).

Where plaintiff filed four counts charging assault and battery and slander and each count claimed damages of $3,000, Municipal Court for District of Columbia, whose pecuniary jurisdiction is $3,000, was without jurisdiction, as against contention that each claim must be considered as separate claim and that municipal court had jurisdiction so long as none of the single claims has sought more than the $3,000. *Reaves* v. *Yale Transit Corp.* (D.C. Mun. App. 1957, 128 A. 2d 792).

Where statute limits jurisdiction of trial court to amount claimed, jurisdiction of court to entertain action is determined by amount and nature of relief claimed in complaint and where plaintiff sought rescission of contract as distinguised from action for damages upon a rescission, and for relief beyond court's statutory jurisdictional maximum, the court lacked jurisdiction of the action. *Hirshon* v. *Whelan etc.* (D.C. Mun. App. 1955, 113 A. 2d 484).

If matter in controversy in a case exceeds the value of $3,000, exclusive of interest and costs, the jurisdictional requirements of the Judicial Code and the District of Columbia Code are satisfied insofar as the amount involved is concerned. *Id.*

In some classes of cases, such as suits for rent overcharges and actions transferred by the District Court, the jurisdiction of the Municipal Court is unlimited as to amount. However, its jurisdiction in tort and contract cases is limited to $3,000. It is entirely clear that this limitation applies not only to the original claim but also to counterclaims and cross claims. *Hillyard* v. *Kline* (D.C. Mun. App. 1949, 64 A. 2d 759).

The trial court is one of limited jurisdiction and the pleadings in that court should show that the matter involved is within its jurisdiction. Where there was no claim of value stated in the petition below, but where it was agreed that when the case was tried, the goods involved had then been converted into cash exceeding the jurisdictional limits, the court was without jurisdiction. *Bowles* v. *Stonebraker* (D.C. Mun. App. 1949, 65 A. 2d 575).

When a third party makes claim to goods seized under an attachment on a judgment, the amount involved is not the amount of the judgment but the value of the property claimed. *Id.*

Where husband and wife in a single action each sought damages in amount of $3,000 for personal injuries, suit was within jurisdiction of Municipal Court, since each of claims was within $3,000 limit of court's jurisdiction. *Taylor* v. *Yellow Cab Co. of D.C.* (D.C. Mun. App. 1947, 53 A. 2d 691).

6. Attachment

Under provisions of former section 11–703 [set out as a note under this section] regarding attachment and garnishment and giving the municipal court exclusive jurisdiction over various classes of actions, including proceedings by attachment that involve $1,000 or less, in action for $490.10 and interest on foreign judgment against nonresident, municipal court had jurisdiction to issue writs of attachment and notices of garnishment before judgment directed to executor of estate in which the nonresident claimed on interest and to bank in which estate funds had been deposited. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

7. Civil rights

Civil Rights Act did not confer jurisdiction upon U.S. courts in general but so far as actions for penalties, it gave jurisdiction specifically to the territorial, district or circuit courts, and the Municipal Court is not one of these courts and has no such jurisdiction. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1948, 63 A. 2d 649).

8. Conferring of jurisdiction

Although jurisdictional issue was not raised, jurisdiction of subject matter could not be assumed by court nor conferred upon it by consent or silence of parties. *J. F Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Jurisdictional issue may be raised sua sponte by reviewing court. *Id.*

Where main purpose of an action is to obtain injunctive relief from future acts, jurisdiction cannot be conferred on Municipal Court for the District of Columbia by alleging that damages already sustained do not exceed $3,000. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Jurisdiction of a subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and objection to court's jurisdiction may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1948, 63 A. 2d 649).

9. Continuance

Where accused was represented by counsel of his own choice at time of arraignment and such counsel was with accused on date case was originally set for trial, but case was continued at request of accused and there was no evidence of further action by such counsel or explanation of his absence on trial date or showing that accused on day of trial made any effort to locate such counsel, there was no abuse of discretion in refusing a continuance or in proceeding to trial with assigned counsel. *Slaughter* v. *U.S.* (D.C. Mun. App. 1948, 60 A. 2d 700).

Denial of continuance requested by accused because of the absence of witnesses was not improper in absence of showing of expected testimony or probability that absent witnesses would be available if case were continued or showing of probability that absence of witnesses substantially affected result of trial or that result would have been different if they had been located and produced. *Id.*

Where the trial court had said a doctor's certificate would be required before the case could be continued because of appellant's illness and appellant was produced in court for the trial which continued without further objection, the question of granting the continuance was in the judicial discretion of the trial court. *Campbell* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 191).

Under the circumstances of the case, the question whether to grant a further continuance was a matter of discretion with the trial judge. The refusal thereof affords no basis for inquiry by an appellate court. *Glenn* v. *Mindell* (D.C. Mun. App. 1950, 74 A. 2d 835).

Where illness of defendant prevented trial, motion for continuance rests in sound discretion of the Trial Court and is not subject to reversal unless discretion is abused or not in accordance with fixed legal principles. *Etty* v. *Middleton* (D.C. Mun. App. 1948, 62 A. 2d 371).

The granting or refusal of a continuance by the trial court is not reviewable except for abuse of discretion. *Hillyard* v. *Smither & Mayton, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 166).

10. Directed verdict

Directed verdict in favor of the District was proper where there was no evidence showing that defendant's automobile ran through a depression and collided with plaintiff's automobile in road maintained by the District. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

11. Discovery

Where case originates in the Municipal Court of the District of Columbia and proceeds to judgment in that forum, which judgment is subsequently transcripted to the District Court for lien purposes or to extend the statutory period of limitations, the better practice would be to utilize the methods of discovery provided by the rules of the Municipal Court. *Paley* v. *Solomon* (1945, 59 F. Supp. 887).

12. Discretion of court

Whether a defense shall stand or be set aside rests in the sound discretion of the trial court and where before denying the motion to vacate, the trial court heard all testimony to determine whether appellant had a meritorious defense and was convinced that no such defense existed, discretion was not abused. *Schoon* v. *Marvins Credit, Inc.* (D.C. Mun. App. 1949, 65 A. 2d 212).

13. Dismissal

Where, on the second call of the calendar after plaintiff failed to appear, defendant moved that the action be dismissed with prejudice, and the court granted this motion,

argument that rule permits only dismissal without prejudice is unfounded. The rule limits the authority of the clerk to a dismissal but imposes no express restriction on action by the court. Unless expressly restricted by statute or rule, a court has inherent power to dismiss an action for want of prosecution. *Jarcy* v. *Griffith* (D.C. Mun. App. 1949, 65 A. 2d 919).

Where a complaint for libel did not set forth the alleged defamatory matter verbatim, dismissal of the complaint was plainly correct. *Watwood* v. *Credit Bureau, Inc.* (D.C. Mun. App. 1949, 68 A. 2d 905).

14. Docketing of judgment

After rendition of judgment by the municipal court, the judgment creditor may file in the clerk's office of the Supreme Court a certified copy of the judgment, and, when so docketed, the judgment shall have the same force and effect as if it had been a judgment of the Supreme Court of the District. *Brown* v. *Allan E. Walker & Co.* (1928, 26 F. 2d 545, 58 App. D.C. 173).

Under this chapter, the mere docketing of a judgment of the Municipal Court of the District of Columbia in the District Court makes the judgment of the Municipal Court a judgment of the District Court for all purposes as if it had originally been obtained there, but the judgment does not lose its character as a judgment of the inferior court although it also becomes a judgment of the District Court. *Paley* v. *Solomon* (1945, 59 F. Supp. 887).

Where judgment obtained in the Municipal Court of the District of Columbia was docketed in the District Court, giving the District Court concurrent jurisdiction with the Municipal Court, and there was no reason why proceedings supplemental to execution could not be taken in the Municipal Court, the District Court would, under the doctrine of forum non conveniens, refuse to exercise its jurisdiction of the proceeding. *Id.*

Municipal Court is not divested of jurisdiction where it entertains supplemental proceedings in aid of execution of its judgment subsequent to the docketing of the judgment in the District Court, since there is no statute to the effect that Municipal Court loses jurisdiction upon the docketing of its judgment in District Court. *Halperin* v. *Cohen* (D.C. Mun. App. 1949, 67 A. 2d 295).

15. Ejectment

Municipal court had jurisdiction of ejectment action brought by owner of land against occupant who was in possession without right after lawful entry where such occupant did not challenge owner's title. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Plaintiff's title is not "in issue", in ejectment cases, when it is expressly conceded or not denied, and in such cases municipal court has jurisdiction; but whenever it becomes apparent in action of ejectment in municipal court that plaintiff's title must be tried and determined, that court should take no further cognizance of cause, but should stop short. *Id.*

The purpose of ejectment, at common law, was primarily to determine question of right to possession, and secondarily question of title, if that question were raised so as to make right to possession depend upon it; and its function in the District of Columbia is the same since the repeal of the mandatory requirement that title be an issue. *Id.*

16. Equitable powers

Municipal Court for District of Columbia, under its equity powers, lacked jurisdiction to entertain cause of action by property owners to cancel special assessment by District for certain paving improvements to sidewalks and alley. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Municipal Court of District of Columbia has such equitable power as may be necessary to fully and completely exercise its exclusive jurisdiction of civil action in which claimed value of personal property or debt or damages claimed does not exceed $3,000. *Id.*

As an incident to its exclusive jurisdiction of civil actions in which claimed value of personal property or debt or damages claimed does not exceed $3,000, the Municipal Court has such equitable powers as may be necessary to fully and completely exercise such jurisdiction, but its equity powers are incidental and limited and are not primary or general; and such court lacked jurisdiction to entertain complaint for injunction against assertion of lien on plaintiff's property for unpaid water bill and to restrain defendants' from delivering tax deed for property. *Friedman* v. *District of Columbia et al.* (D.C. Mun. App. 1959, 155 A. 2d 521).

The Municipal Court for the District of Columbia has exclusive jurisdiction of any action involving personal property of a claimed value not exceeding $3,000 and of any action wherein recovery is sought for death or damages not exceeding $3,000, and as an incident to its exclusive jurisdiction, Municipal Court has such equitable power as may be necessary to fully and completely exercise its jurisdiction. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Municipal Court for District of Columbia has equitable as well as legal powers, but its jurisdiction in any civil action is limited by statutory jurisdictional amount. *Hirshon* v. *Whelan etc.* (D.C. Mun. App. 1955, 113 A. 2d 484, affirmed 232 F. 2d 339).

The Municipal Court for District of Columbia has exclusive jurisdiction of civil actions, legal or equitable involving personal property of a value of less than $3,000. *Shulman* v. *Shulman* (D.C. Mun. App. 1952, 86 A. 2d 527).

Even in the exercise of its equitable power, the Municipal Court for the District of Columbia had no right to entertain a collateral attack on foreign judgment or to award judgment debtor a retrial of his case. *Suydam* v. *Ameli* (D.C. Mun. App. 1946, 46 A. 2d 763).

Principles that equitable defense may be interposed in all actions at law, that mutual debts and claims under contract between parties to common-law action may be set off against each other and that where claim of setoff is made, judgment must be rendered for balance found due whether to plaintiff or defendant with costs, apply to landlord and tenant actions in Municipal Court in District of Columbia. *Mitchell* v. *David* (D.C. Mun. App. 1947, 51 A. 2d 375).

The remedy in equity for breach of a partnership agreement is not exclusive, and there may be at law a recovery for such breach. It is only when the controversy involves an investigation and audit of accounts that resort must be had to equity. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

17. Execution

Generally, in the absence of statute to the contrary, execution should issue from the court rendering the judgment, rather than from the superior court to which the judgment has been transcripted. *Paley* v. *Solomon* (1945, 59 F. Supp. 887).

18. Forcible entry and detainer

Forcible entry and detainer is not a substitute for trespass, and the actions are not the same. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

19. Identity of claim

If two separate and distinct primary rights should be invaded by one and the same wrong or if a single primary right should be invaded by two distinct and separate legal wrongs, two causes of actions would result, and unless the "evidence necessary to prove one cause of action would establish the other" there is no identity of causes of action. *Astor Pictures Corp.* v. *Shull* (D.C. Mun. App. 1949, 64 A. 2d 160).

20. Implied contracts

Municipal court of District of Columbia had jurisdiction of a claim for debt arising out of an "implied" contract, not exceeding $300. *District of Columbia* v. *Thompson* (1930, 50 S. Ct. 172, 281 U.S. 25, 74 L. Ed. 677).

21. Interest

When interest is allowed on tort claims as part of compensatory and punitive damages, such interest and damages must be included in deciding whether case is within $3,000 jurisdictional limit of Municipal Court of District of Columbia. *Riss & Co., Inc.* v. *Feldman* (D.C. Mun. App. 1951, 79 A. 2d 566).

22. Jurisdiction—Generally

Where the parties both claim title to the real estate, which is the subject of the possessory action, it is clear that the trial court has no power to decide the question of ownership. *Everett* v. *Miller* (D.C. Mun. App. 1949, 67 A. 2d 399).

In a class B action involving less than $500, Municipal Court rules apply, and trial court erred in ruling that defendant waived jurisdiction by failing to raise it by motion since rules do not preclude raising any defense available; further jurisdiction over subject matter may never be conferred by consent and may even be questioned for first time on appeal. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

Where, in an ordinary action for personal damages, the proof establishes that the title to realty is really in issue, the case no longer involves personal property, debt or damage, so as to come within court's expanded jurisdiction. *Id.*

So long as a wife's action for divorce or separate maintenance was pending in District Court, the Municipal Court ought not to entertain a proceeding between the parties involving any of the issues in the District Court proceeding. *Keleher* v. *Keleher* (D.C. Mun. App. 1948, 62 A. 2d 638).

Jurisdiction of the subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and it may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

Where in a motion for summary judgment, supporting affidavits show plainly that the issue between the parties was whether defendant had good title to real estate, the court is without jurisdiction since court would have had to determine the state of the title. *Cohen* v. *Brandt* (D.C. Mun. App. 1949, 63 A. 2d. 853).

23. —— After appeal

When the mandate of an appellate court is filed in the lower court, that court reacquires the jurisdiction which is lost by the taking of the appeal. *Pyramid National Van Lines, Inc.* v. *Goetze* (D.C. Mun. App. 1949, 66 A. 2d 693).

24. Law of the case

Instructions approved by appellate court became "law of the case", and failure to give them upon retrial was error unless they were given in substance in general charge. *Frazer* v. *Crounse* (D.C. Mun App. 1948, 56 A. 2d 54).

25. Leases

Rights and obligations between cooperatively owned corporation and member-tenant under proprietary lease on which member-tenant has defaulted can be determined in a summary landlord and tenant proceeding in municipal court and need not be litigated in federal District Court. *Valois, Inc.* v. *Thorne* (D.C. Mun. App. 1952, 86 A. 2d 530).

A judgment of District of Columbia Municipal Court, awarding lessors possession of leased building for nonpayment of $520 representing two months' rent, less $55 per month exceeding rent ceiling, for two apartments therein, was erroneous as granting reformation of ten year lease in amount and to extent exceeding court's jurisdictional limitation of $3,000. *Psarakis* v. *Dukane, Inc.* (D.C. Mun. App. 1951, 84 A. 2d 543).

26. Motion for new trial

Trial judge may on his own motion require more detailed affidavits or testimony for and against motion for new trial, but failure to do so does not necessarily constitute abuse of discretion. *Peay* v. *Parks* (D.C. Mun. App. 1945, 42 A. 2d 250).

One seeking a new trial must present substantial reasons for believing that an injustice has been done or that for some other good reason the circumstances entitle him to a second day in court, and it is not enough merely to suggest vague grounds for new trial. *Id.*

Where defendant moved for a new trial or for judgment notwithstanding verdict, trial court must act upon each and granting of motion for judgment is not ground for summarily denying motion for new trial. The court must indicate its reasons therefor. *Crusade* v. *Capital Transit Co.* (D.C. Mun. App. 1949, 63 A. 2d 878).

27. Negligence Causing Death Act

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to $3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon* v. *Driggers* (D.C. Mun. App. 1956, 125 A. 2d 847).

28. Pleadings

Where buyer's complaint, whereby buyer sought damages for fraudulent representations in an amount within Municipal Court's jurisdiction, was ambiguous in that it did not clearly disclose whether rescission was sought or damages after rescission, and seller did not raise jurisdictional question in Municipal Court and Municipal Court considered only the damage claim, the action was within Municipal Court's jurdisdiction, notwithstanding that the amount involved in a rescission action would have been in excess of jurisdictional amount. *Whelan, etc.* v. *Hirshon* (1956, 232 F. 2d 339, 98 U.S. App. D.C. 82).

An assertion in pleadings that plaintiff received tax deed from commissioner does not place title in issue and where intervenor did not plead irregularity in tax deed, he did not waive right to raise the question of the jurisdiction of the Municipal Court over the controversy. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

Where subject matter of the present suit was returned after suit was filed, but prior to the filing of the answer, evidence warranted the invocation of the rule providing that when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings, and failure to amend does not affect the result of these issues. *Orrison* v. *Ferrante* (D.C. Mun. App. 1950, 72 A. 2d 771).

29. Probation

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile* v. *United States* (D.C. Mun. App. 1944, 38 A. 2d 620).

Where record was devoid of anything indicating that there was newly discovered evidence or that claimed newly discovered evidence met any of the familiar tests which would entitle defeated litigant to a new trial, refusal of motion for new trial on the ground of newly discovered evidence was not an abuse of discretion. *Levy* v. *Bryce* (D.C. Mun. App. 1946, 46 A. 2d 765).

30. Purpose

The real purpose of this section providing that where a judgment of the Municipal Court of the District of Columbia is docketed in the District Court it becomes a judgment of the District Court, was to provide for a lien on real estate and to extend the period of limitation. *Paley* v. *Solomon* (1945, 59 F. Supp. 887).

31. Reformation or rescission

The Municipal Court for the District of Columbia would be without jurisdiction to try issues appropriate to suit for reformation or rescission of instrument or for specific performance, unless such issues were presented by way of defense to action within the court's jurisdiction. *Howenstein Realty Corporation* v. *Richardson* (1943, 135 F. 2d 803, 77 U.S. App. D.C. 299).

Municipal court of the District of Columbia did not lack jurisdiction to entertain action by buyers against seller to rescind contract for purchase of speedboat for $1,000. *Robinson* v. *Carter et al.* (D.C. Mun. App. 1950, 77 A. 2d 174).

32. Remedy as legal or equitable

The term "personal property," within this section giving Municipal Court for District of Columbia jurisdiction of civil actions involving personal property having value less than $3,000, covers choses in action whether they are legal or equitable, and the words "civil actions" are generally held to cover both actions at law and actions in equity. *Klepinger* v. *Rhodes* (1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, certiorari denied 64 S. Ct. 1047, 322 U.S. 734, 88 L. Ed. 1568).

The jurisdiction of the Municipal Court for the District of Columbia embraces equitable as well as legal actions. *Ridgley* v. *U.S.* (D.C. Mun. App. 1945, 45 A. 2d 475).

33. Rents

Claims of son against sister involving rents from deceased father's property were within jurisdiction of municipal court. *Shields* v. *Shields* (1939, 101 F. 2d 255, 69 App. D.C. 331).

34. Representation by counsel

Where accused made no protest or objection with respect to appointment of counsel but conferred with such counsel for some fifteen minutes prior to trial, and no request was made for further period of consultation or for continuance, accused could not complain that he was deprived of effective assistance of counsel because of short time that elapsed between appointment of counsel and time of trial, particularly where accused was free on bond for four months between time of arraignment and time of trial, during which period he and counsel of his choice had ample opportunity to prepare defense. *Slaughter* v. *U.S.* (D.C. Mun. App. 1948, 60 A. 2d 700).

Where defendant had been granted four additional days in which to procure his own counsel and the trial court finally appointed an attorney with the defendant expressing no dissatisfaction, conferred with him for fifteen minutes prior to the trial and did not ask for a longer period, the defendant was not deprived of counsel of his own choice at the trial of his case. *Id.*

35. Res Judicata

Where insured brought personal injury suit in United States District Court for the District of Columbia for damages in excess of $3,000, and insurer, which had paid less than $3,000 in property damages, could not present its claim in District Court because of jurisdictional limitations and it consented to stay of proceedings in Municipal Court on its claim against same defendant, District Court judgment adverse to insured was not determinative of insurer's rights as subrogee under its policy and judgment was not res judicata of pending suit in Municipal Court. *Emmco Insurance Co.* v. *M. E. Brown* (D.C. Mun. App. 1962, 178 A. 2d 429).

Where, even assuming jurisdiction in Municipal Court, the responsibility of the husband to pay rent for wife's separate apartment has been fully presented to and decided by the District Court, and the doctrine of res judicata precluded relitigation of that issue in the Municipal Court. *Keleher* v. *Keleher* (D.C. Mun. App. 1948, 62 A. 2d 638).

36. Review

Reviewing court may affirm proper dismissal of case on appeal for different reasons from those adopted by trial court. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Where the court below accepted the record made by the municipal court as against an affidavit by party that there was clerical error, on appeal the ruling will not be disturbed. *Dreslin* v. *Phillips* (1922, 279 F. 303, 51 App. D.C. 324).

Notwithstanding general rule that question first raised on motion for rehearing on appeal will not be considered, jurisdictional questions first raised at such time will be considered. *Hirshon* v. *Whelan, etc.* (D.C. Mun. App. 1955, 113 A. 2d 484).

37. Revival of judgment

The District Court of the United States for the District of Columbia may revive judgment filed by scire facias. *Green* v. *Mann* (19 App. D.C. 243).

38. Right of suit

To acquire the right of suit, the plaintiff must be a direct, as distinguished from a mere incidental beneficiary because an incidental beneficiary acquires by virtue of the promise no right against the promisor or the promisee *Schwartz* v. *Brown* (D.C. Mun. App. 1949, 64 A. 2d 298).

39. Right to jury trial

In the Landlord and Tenant Branch of the Municipal Court, parties are not entitled as a matter of right to separate jury trials on what used to be called pleas and abatements and it lies within the sound discretion of the trial court to decide whether such separate jury trials shall be had. *Rubenstein* v. *Swagart* (D.C. Mun. App. 1950, 72 A. 2d 690).

40. —— Nonsuit

Under rule 37(a) of the Municipal Court, plaintiffs have lost their right to a nonsuit or voluntary dismissal after defendant's answer has been filed, since beyond that point an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. *Mercer* v. *Equitable Life Insurance Society* (D.C. Mun. App. 1949, 65 A. 2d 207).

41. Separate maintenance

Municipal court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly, judgment obtained by physician for professional services rendered to wife against husband must be dismissed. *Irwin* v. *Hawfield* (D.C. Mun. App. 1948, 62 A. 2d 926).

Wife's claim against husband for amount of rent due was in substance an action to compel the husband to provide funds for her separate maintenance over which the Municipal Court had no jurisdiction since such relief is specifically given to the District Court. *Keleher* v. *Keleher* (D.C. Mun. App. 1948, 62 A. 2d 638).

42. Splitting of claim

When plaintiff, who had been employed by defendant for a term of five years, was told to look for other employment before expiration of such term and defendant ceased paying him, his right of action was one for damages for breach of contract and not for wages, and he was required to recover all present and prospective damages in one suit and could not split his cause of action and sue separately as installments came due. *Keller* v. *Marvin's Credit, Inc., etc.* (D.C. Mun. App. 1959, 147 A. 2d 872).

Where plaintiff brought two separate actions, consolidated for trial, to collect commissions allegedly due from separate sales under contract whereby defendant was to pay plaintiff 5 percent commission on all sales to federal government agencies, and aggregate sum claimed exceeded maximum jurisdiction of municipal court, there was but one cause of action, and plaintiff could not, by splitting his cause of action, vest that court with jurisdiction. *Le John Mfg. Co.* v. *Webb* (D.C. Mun. App. 1952, 91 A. 2d 332).

A single or entire claim or demand cannot be split up and divided into separate claims and separate suits maintained for the various parts thereof. But the rule does not require that two distinct causes of actions, either of which would by itself authorize independent relief, must be presented in a single suit though they exist at the same time and might be considered together. *Astor Pictures Corp.* v. *Shull* (D.C. Mun. App. 1949, 64 A. 2d 160).

43. Statutory penalty

Civil Rights Act did not confer jurisdiction upon United States courts in general but in respect of actions for penalties, the act gave jurisdiction specifically to the territorial, district or circuit courts. The Municipal Court is not one of these courts and has no such jurisdiction. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

44. Stay of proceedings

The Municipal Court has power, under proper circumstances, to stay its own proceedings pending determination of an action in the District Court. *Bradley* v. *Triplex Shoe Company* (D.C. Mun. App. 1949, 66A. 2d 208).

45. Stockholder's suit

Under section 29–240 authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting

stockholders' shares was less than $3,000. *Davis* v. *Universal Corporation* (D.C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

46. Subpoena duces tecum

There is no rule in the trial court with respect to the issuance of subpoena duces tecum in criminal cases, but the practice there appears to require the approval of the court for the issuance of such a subpoena. In view of the federal rules and the trial court's own rule in civil cases, it would have been better policy to issue the subpoena and rule on the admissibility of the evidence when offered, but we find no prejudicial error in the court's refusal of such requests. *Kelly* v. *United States* (D.C. Mun. App. 1950, 73 A. 2d 232).

Where appellant was convicted for violation of Code § 22–2701, it was not error for the court to refuse to issue a compulsory process for obtaining witnesses, since the rule is well established that a party is not entitled of right to a subpoena duces tecum in any form, at any time and under any circumstances and a subpoena duces tecum too indefinite in terms, too broad in scope, or untimely requested may properly be denied. *Id.*

47. Title to realty

As used in former section 11–703 [set out as a note under this section] denying municipal court jurisdiction in "cases involving title to real estate", quoted expression is identical in meaning with phrase "cases where title to real estate is in issue". *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

It is obvious that Congress intended to exclude from the jurisdiction of the municipal court only cases where there is a necessary and direct issue as to the title to real estate, and the court properly assumed jurisdiction of an action to recover the balance of money received on a foreclosure sale. *Schwartz* v. *Murphy* (1940, 112 F. 2d 24, 72 App. D.C. 103).

Former section 11–703 [set out as a note under this section] expressly excludes from the jurisdiction of the municipal court actions involving title to real estate. *Johnson* v. *Simmons* (1923, 290 F. 331, 53 App. D.C. 356).

Retrial of title to real estate. *Gray* v. *Ward* (45 App. D.C. 498).

Where action by administrator of decedent's estate sought in part to require trustees under deed of trust on certain real estate to release such deed and to compel the cancellation of notes secured thereby, action necessarily and directly put title to real estate in issue and hence Municipal Court for the District of Columbia, Civil Division, did not have jurisdiction. *Barbour as administrator etc.* v. *Baltz, etc.* (D.C. Mun. App. 1958, 146 A. 2d 905).

Section 11–738, prescribing procedure to be followed when title is put in issue by defendant in summary proceeding for possession of real property and requiring that the litigant must file written plea setting forth nature of title claimed, accompanied by an undertaking, are mandatory, and question of title can enter case only by special plea of defendant and if not perfected in accordance with statutory requirements, court is without authority to dismiss for lack of jurisdiction, but must proceed to hear case of possession. *Sayles* v. *Eden* (D.C. Mun. App. 1958, 144 A. 2d 895).

Municipal court should not reject jurisdiction unless and until it is made to appear that the title to land is necessarily directly in issue between the parties. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

Where plaintiff's purchase included real property at a sale under a deed of trust made by defendant to secure a debt, suit for possession must not be confused with other categories of actions in which it is claimed that title to real property is involved. *Id.*

Where, in an ordinary action for personal damages, the proof establishes that the title to realty is really in issue, the case no longer involves personal property, debt or damage, so as to come within court's expanded jurisdiction. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

48. United States, actions by

The Municipal Court of District of Columbia does not have jurisdiction of suits brought by the United States. *U.S.* v. *Sheriff Motor Co.* (1943, 63 F. Supp. 685).

The Municipal Court for the District of Columbia had jurisdiction of action brought by the United States to recover $269.03 for rent. *Ridgley* v. *U.S.* (D.C. Mun. App. 1945, 45 A. 2d 475).

The United States was not precluded from bringing dispossessory proceedings against tenant in the Municipal Court for the District of Columbia, over objection of tenant that the United States District Court for the District of Columbia had exclusive jurisdiction. *Wittek* v. *U.S.* (D.C. Mun. App. 1947, 54 A. 2d 747, reversed 171 F. 2d 8, 83 U.S. App. D.C. 377, reversed and remanded 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

49. Writs

Execution of writ of restitution issued by Municipal Court for the District of Columbia was strictly a governmental function. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

§ 11–962. Transfer of civil actions to Court of General Sessions.

In a civil action commenced in the United States District Court for the District of Columbia, other than an action for equitable relief, where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but prior to trial thereof that the action will not justify a judgment in excess of $10,000, the court may certify the action to the District of Columbia Court of General Sessions for trial. The pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the clerk of the Court of General Sessions. Promptly thereafter, the Court of General Sessions shall call the case for trial. The Court of General Sessions shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action, even though it exceed the sum of $10,000. (Dec. 23, 1963, 77 Stat. 490, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–756 (Apr. 1, 1942, ch. 207, § 5, 56 Stat. 193; June 29, 1953, ch. 195, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, § 3, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 3, 77 Stat. 78).

Section is derived from subsec. (a) of section 11–756 of D.C. Code, 1961 ed. For remainder of section 11–756, see tables.

Changes are made in phraseology.

Cross References

Deposits for jury trials, see § 15–713.

Nonresident witnesses, see § 14–104.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Abuse of discretion

Discretion is an area, not a line or a point; and scope of review of order of District Court transferring cause to Municipal Court when District Court is satisfied that action will not justify judgment in excess of $3,000 is necessarily very limited; and issue for reviewing court is not whether District Court wisely exercised its discretion but whether, in transferring case to Municipal Court, it acted arbitrarily and thus abused its discretion *Gray et ano.* v. *Evening Star Newspaper Co. et al.* (1960, 277 F. 2d 91, 107 U.S. App. D.C. 292).

Determination of judge of Federal District Court for the District of Columbia in entering order certifying action to Municipal Court on ground judgment in excess of $3,000 would not be justified is an exercise of discretion which will not normally be disturbed on appeal unless arbitrary, but such discretion becomes arbitrary if it has been exercised for an erroneous reason. *Davis* v. *Peerless Inc. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

District Court did not abuse its discretion in certifying personal injury suit to Municipal Court for District of Columbia for trial on ground that defense counsel in transferred cases frequently argue that the damages in excess of $3,000 should not be awarded and point to District Court's order as indicating that such was already established opinion of district judge, since plaintiff would be entitled to receive instruction that jury should disregard any such argument and might award damages in such amount as it should find plaintiff was entitled to receive up to the amount claimed in the action. *Melton* v. *Capital Transit Company* (1958, 253 F. 2d 42, 102 U.S. App. D.C. 306).

In action to recover $50,000 on account of personal injuries sustained as a result of alleged negligence of defendants, District Judge did not abuse his discretion in certifying case, to Municipal Court for District of Columbia for trial, on ground that it appeared to him that action would not justify a judgment in excess of $3,000. *Barnard* v. *Schneider & District of Columbia* (1957, 243 F. 2d 258, 100 U.S. App. D.C. 152).

2. Affirmative defenses

Contributory negligence is an affirmative defense and must be pleaded and proved by defendant. *Gittleson* v. *Robinson* (D.C. Mun. App. 1948, 61 A. 2d 635).

The defense of the statute of frauds is an affirmative defense and must be pleaded. *Saunders System Washington Co.* v. *Kuffner* (D.C. Mun. App. 1950, 75 A. 2d 136).

3. Amendment of pleadings

Where broker sought to recover commissions from another broker and owner of realty under claim that they had authorized him to obtain a purchaser for realty and that he had done so, but at trial plaintiff advanced evidence in support of that claim and in support of inconsistent claim that he was engaged only by the other broker to assist in selling realty with agreement that commission should be shared, court properly permitted plaintiff to amend bill of particulars after verdict on second claim in order to conform to the evidence. *Davis* v. *Bruno* (D.C. Mun. App. 1948, 57 A. 2d 828).

In landlords' action for possession of realty on ground of default in payment of rent, wherein tenant moved to dismiss complaint because of failure to show whether notice to quit had been given or had been waived in writing, and it was admitted that tenant held possession under written lease which waived notice to quit in event of default in payment of rent, trial court properly permitted landlords to amend complaint by inserting a check mark on printed form indicating that notice to quit had been waived. *Barnes* v. *Conner* (D.C. Mun. App. 1945, 44 A. 2d 925).

The trial court has wide discretion in the allowance of amendments of pleadings both before and during trial. *Peake* v. *Ramsey* (D.C. Mun. App. 1945, 43 A. 2d 763).

4. Attachment

Where debtor was served with notice to appear in suit by creditor for balance due for merchandise sold, but failed to appear, and after default judgment was entered, an attachment entered on judgment was returned unsatisfied, and debtor was served personally with subpoena, but failed to appear for oral examination, municipal court should have granted creditor's request to issue an attachment so that debtor might be brought before court. *Hill v. McWilliams* (D.C. Mun. App. 1952, 89 A. 2d 383).

5. Certification "prior to trial"

Action which had been originated in district court was certified to municipal court "prior to trial" within removal statute even though parties had already appeared before district court judge for trial and even though plaintiff had already made his opening statement when defendant moved for certification to municipal court. *R. H. Stringfellow, Administrator etc.* v. *D. Broders* (D.C. Mun. App. 1962, 181 A. 2d 340).

6. Conditions on dismissal

Rule 37 providing that after service of answer an action shall not be dismissed at plaintiff's instance save on order of the court and on such terms as the court deems proper, does not make it mandatory on the trial judge to assess counsel fees as a condition to dismissal without prejudice. *Adams* v. *Davis* (D.C. Mun. App. 1946, 47 A. 2d 792).

Where plaintiffs did not know seriousness of injuries for which recovery was sought until shortly before trial in municipal court because physician who had treated injuries could not previously be located because he was in the navy, plaintiffs' motion to dismiss the action without prejudice was granted without requiring plaintiffs to pay defendants' counsel fees as a condition of the dismissal. *Id.*

7. Consent to jurisdiction

Where main purpose of an action is to obtain injunctive relief from future acts, jurisdiction cannot be conferred on Municipal Court for the District of Columbia by alleging that damages already sustained do not exceed $3,000. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

The Municipal Court of Appeals has no jurisdiction to entertain an appeal from an order or judgment that is not final, and consent of the parties cannot enlarge its jurisdiction. *Moyer* v. *Moyer* (D.C. Mun. App. 1957, 134 A. 2d 649).

8. Consolidation

Under court rule regarding consolidation and joinder, consolidation of two or more informations for trial is conditioned on possibility of joinder of the offenses and of the defendants in a single information, and joinder is permitted only if defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. *District of Columbia* v. *Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

9. Contempt

Where an attorney for accused during trial publishes a document containing highly derogatory assertions regarding trial judge's alleged relations to trial and his alleged conduct of the trial and which is in effect a public profession of contempt for the judge's character, attorney should ask to be excused from trial. *Laughlin* v. *Eicher* (1944, 145 F. 2d 700, 79 U.S. App. D.C. 266, certiorari denied 65 S. Ct. 1403, 325 U.S. 866, 89 L. Ed. 1985).

Where during trial and in open court attorney accused trial judge of gross and habitual misconduct in the trial, the attorney's conduct was contempt in court's presence and justified order dismissing attorney from the trial. *Id.*

A defendant may be adjudged in contempt for failure to pay permanent alimony awarded in a final judgment for absolute divorce. *Tilghman* v. *Tilghman* (1944, 57 F. Supp. 417).

A court, once having acquired jurisdiction over person of defendant, is empowered to enter a contempt order, notwithstanding defendant's absence from jurisdiction, provided he received notice of the motion. *Id.*

To call another a liar in the presence of the court and while the court is in session amounts to contempt of court. An attorney, as an officer of the court, must behave with propriety in the courtroom. *In re Chaifetz* (D.C. Mun. App. 1949, 68 A. 2d 228).

Due process of law in the prosecution of contempt, except where committed in open court, requires that the accused be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. *Id.*

Where contempt would be civil in nature, the rule is that action on such a matter is not reversible unless an abuse of discretion is made to appear. *Daime* v. *Price* (D.C. Mun. App. 1950, 71 A. 2d 611).

10. Continuance

When a witness not under subpoena fails to make his promised appearance, the granting of a continuance rests in the discretion of the trial court. *Union Storage & Transfer Co.* v. *Lamphere* (D.C. Mun. App. 1944, 40 A. 2d 258).

11. Costs

Rule 68(a) of municipal court permitting trial judge to make order respecting outside stenographers concerning furnishing of copies of transcript and compensation to be paid therefor is not mandatory. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Where trial was half over and court requested defendant to furnish court with transcript of record up to that point with result that reporter's bill was $150 instead of lower cost at defendant's request was not called, refusal of court to make order fixing lower costs at defendant's request was not an abuse of discretion. *Id.*

Where it was held that party attempting to appeal had no right to do so and judgment was affirmed, cost of stenographic record included in record on appeal could not be taxed against appellant by Municipal Court of Appeals but could only be taxed by trial court. *Klein* v. *Liss* (D.C. Mun. App. 1945, 43 A. 2d 757).

12. Counterclaims

Whether claim asserted in District of Columbia Municipal Court action actually constituted compulsory counterclaim to suit in District Court of United States for District of Columbia was question for District Court, since such question involved interpretation of District Court's own rules. *Kaplowitz Bros.* v. *Kahan* (D.C. Mun. App. 1948, 59 A. 2d 795).

Defendant's argument that, under rules of the Municipal Court, his claim constituted a compulsory counterclaim which would be waived if not pleaded in the Municipal Court action, is unfounded since the Municipal Court could not change or enlarge its jurisdiction by a rule. *Hillyard* v. *Kline* (D.C. Mun. App. 1949, 64 A. 2d 759).

It is clear that in an action for earned freight charges a counterclaim for cargo damages is a compulsory counterclaim under court rules. *Pyramid National Van Lines, Inc.* v. *Goetz* (D.C. Mun. App. 1949, 66 A. 2d 693).

13. Court of record

Municipal Court of District of Columbia is a court of record, which has equitable jurisdiction, rule making power, and its actions are subject to review by Municipal Court of Appeals. *Encyclopedia Britannica, Inc.* v. *Jones* (1951, 101 F. Supp. 5211).

14. Defendant's statement before sentence

Where accused, conducting his own defense, testified fully and argued his position exhaustively, he was not deprived of any substantial right by failure to afford him the opportunity to make a statement before sentence was pronounced as accorded him by Rule 12(a) of the Criminal Division of the Municipal Court. *Savage* v. *District of Columbia* (D.C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

15. Depositions

Municipal court has no general authority to award counsel fees or traveling expenses incurred by counsel to attend taking of deposition in another city on notice of opposing party, in absence of specific statutory authority or court rule having statutory force and effect. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Where counsel served notice that deposition would be taken in another city and on assurance that witness would attend failed to serve subpoena but witness, because of emergency surgical operation, was unable to attend and would not have done so even under subpoena, opposite party was not entitled under municipal court rule to attorney's fees and expenses for attendance at time and place stated in notice. *Id.*

16. Directed verdict

The practice of submitting cases to the jury and reserving determination of questions of law raised on motion for a directed verdict, so that if the Municipal Court of Appeals disagrees with the trial court's ruling on motion for directed verdict, the jury's verdict can be reinstated without necessity for a new trial, is commendable. *Resnick* v. *Wolfe & Cohen* (D.C. Mun. App. 1946, 49 A. 2d 809).

Question of whether accident was proximately caused by negligence of appellee's driver and question of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D.C. Mun. App. 1948, 62 A. 2d 797).

17. Discretion of court

Under this section authorizing District Court to transfer action to Municipal Court if satisfied that action will not justify judgment in excess of $3,000 broad discretion is vested in District Court. *Gray et ano.* v. *Evening Star Newspaper Co. et al.* (1960, 277 F. 2d 91, 107 U.S. App. D.C. 292).

Under this section authorizing District Court to transfer action to Municipal Court if satisfied that action will not justify judgment in excess of $3,000, District Court should, in deciding whether to retain case or transfer it to Municipal Court, act on basis of data presented under Rules by the parties prior to trial, including the pretrial hearing; but comparative evaluation of conflicting evidence is not part of function of the court at that stage of litigation, and it would have been error for District Judge to weigh reports of medical examinations made on behalf of parties to personal injury action in deciding whether to transfer case. *Id.*

Creditor's motion to rehear a claim of exemption in garnishment suit granted by default was within discretion of the court which could prescribe such terms as were just. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply Inc., et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

18. Dismissal

Under circumstances, order dismissing action for want of prosecution and refusing to set aside dismissal were not erroneous or abuse of discretion. *Holland* v. *Capital Transit Co.* (D.C. Mun. App. 1955, 114 A. 2d 426).

Where plaintiff had been told in open court that she was expected to proceed with her case on certain date

and that there would be no further continuances, dismissal on that date could properly be made without there having been telephone notice on day preceding trial day as provided for by Municipal Court Rule. *Id.*

A motion to dismiss concedes all facts well pleaded and if the complaint states a cause of action, however loosely drawn it may be, it is not subject to dismissal. Such motion may only be granted when it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. *Mancuso* v. *Santucci* (D.C. Mun. App. 1949, 69 A. 2d 274).

The municipal court, after hearing evidence and taking case under advisement, was authorized to make finding for either plaintiffs or defendant, had discretion to reopen case for purpose of taking further testimony respecting plaintiffs' damages, and could have suggested to plaintiffs advisability of taking voluntary nonsuit, but was not authorized to order dismissal of case without prejudice, in absence of plaintiffs' consent. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1943, 58 A. 2d 493).

Dismissal of cause without prejudice on ground that plaintiff has shown no right to relief after he has completed presentation of his evidence has effect of involuntary nonsuit, but such dismissal after completion of evidence on both sides and submission of case for decision is not authorized by municipal court rules. *Id.*

Municipal Court Rule 37, providing that an action shall not be dismissed at plaintiff's insistence save on order of court, was not applicable in suit by landlord to recover leased premises, and municipal court was governed by general practice which existed prior to adoption of municipal court rules, and which permitted plaintiff to dismiss his action at any time prior to verdict, since Rule 10 of the Landlord and Tenant Branch which makes applicable to that branch of the court certain general civil rules, does not include the Municipal Court Rule 37 dealing with voluntary dismissal by plaintiff. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Defendant's motion to dismiss action could not properly be passed upon until evidence had been heard, where motion was based on an assumption of a disputed fact. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

Under rule providing that any dismissal other than dismissal for lack of jurisdiction operates as adjudication on merits unless dismissal order otherwise specifies, dismissal is adjudication on merits and raises bar of res judicata against further actions on the same subject matter, and such defense of res judicata is good not only as to every claim which was actually offered in support of the first action but also as to every ground of recovery which might have been presented. *Mitchell* v. *David* (D.C. Mun. App. 1947, 52 A. 2d 125).

19. Disregard of process, rules or orders

A court will not condone a willful or negligent disregard of court process, rules or orders. *Manos* v. *Fichenscher* (D.C. Mun. App. 1948, 62 A. 2d 791).

20. Duty of court

A party to a cause of action is entitled to have his theory submitted to jury when supported by evidence and pleadings, and the court has duty to submit all such issues, both affirmative and negative. *Fraser* v. *Crounse* (D.C. Mun. App. 1945, 45 A. 2d 757).

In a case tried by the court without a jury, the court has the duty to rule upon requested and pertinent questions of law. *Eggleton* v. *Vaughn* (D.C. Mun. App. 1946, 45 A. 2d 362).

The trial court not only has the power but also the duty to set aside a verdict which is grossly and capriciously excessive. Failure to do so will constitute reversible error. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

21. Effect of rules

Under this section authorizing Municipal Court of District of Columbia to make rules of practice, pleading, and procedure, court rules have the force of law. *District of Columbia* v. *Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

22. Enrollment of attorneys

The rule of the Municipal Court of the District of Columbia requiring that attorneys, before practicing, enroll, take a common oath, sign a roll and pay a small sum, was a reasonable requirement of procedure for efficient administration of justice. *Austin* v. *The Municipal Court, District of Columbia* (1956, 235 F. 2d 836, 98 U.S. App. D.C. 339, certiorari denied 77 S. Ct. 682, 352 U.S. 923, 1 L. Ed. 720).

23. Equitable jurisdiction

Municipal Court of District of Columbia has equitable jurisdiction. *Encyclopaedia Britannica, Inc.* v. *Jones et al.* (1951, 101 F. Supp. 521).

Under section 11–756 authorizing District Court to certify case to Municipal Court if, in any action, other than an action for equitable relief, it shall appear to satisfaction of court that action will not justify judgment in excess of $3,000, only actions in which a money judgment is sought and type of case over which Municipal Court has jurisdiction, are referred to, and District Court did not have authority to certify case to Municipal Court where only relief sought was an injunction. *Geesling et ano.* v. *Fletcher* (D.C. Mun. App. 1959, 154 A. 2d 347).

24. Examination and cross-examination

Where trial court erroneously ruled that defendant was bound by testimony of plaintiff when plaintiff was called for cross-examination by defendant, but before conclusion of trial announced that it would not treat testimony of witness as binding, defendant could not be deemed prejudiced thereby. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Under court rule providing that party may call, interrogate and impeach adverse party in all respects as if he had been called by adverse party, defendant was not bound by testimony of plaintiff when plaintiff was called for cross-examination by defendant. *Id.*

25. Excessive verdict

In action for malicious prosecution, which action had been certified by United States District Court to Municipal Court for the District of Columbia because District Court judge felt verdict exceeding $1,000 was not justified, and wherein jury had no evidence as to defendant's financial worth, verdict of $5,000 compensatory damages and $2,500 punitive damges was, under evidence, excessive. *Levine* v. *Mills* (D.C. Mun. App. 1955, 114 A. 2d 546).

26. Federal laws

28 U.S.C. § 632 providing that the failure of a defendant in a criminal case to testify shall not create any presumption against him applies to prosecution in the Municipal Court for the District of Columbia since there is no local statute on the subject. *Brooks* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 339).

27. Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, do not control the practice in the Municipal Court of the District of Columbia, and, although this section authorized that court to prescribe court rules, the existing rules prevail until adoption of new rules. *Yellow Cab Co. of D.C.* v. *Rogers* (D.C. Mun. App. 1943, 34 A. 2d 36).

The Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, do not control practice in the Municipal Court for the District of Columbia. *Werth* v. *Nolan* (1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9, 79 U.S. App. D.C. 33).

The Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, are inapplicable to Municipal Court for District of Columbia. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Rules of United States District Court for District of Columbia do not govern practice of Municipal Courts for District of Columbia. *Coates* v. *Ellis* (D.C. Mun. App. 1948, 61 A. 2d 28).

28. Findings

Under Municipal Court rule providing for the entry of judgment on the fifth day after verdict or finding by the court and that if a motion for new trial or for judgment notwithstanding the verdict has been filed forthwith upon the ruling of the court on such motion, "finding" means a general finding or decision of the court which

ripens into a judgment on the fifth day in the absence of the filing of a motion. *Rice* v. *Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

Municipal Court Rule 37(b) authorizing defendant to move for dismissal of action on ground that plaintiff has shown no right to relief on facts and law after plaintiff completes presentation of his evidence, does not give such court power to make fact findings at conclusion of plaintiff's case, but such findings should await conclusion of entire evidence. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

29. Instructions

Instruction that verdict might be for nothing was not prejudicial notwithstanding small admitted item of property damage, where in same sentence judge told jury that they might award more than the $10,000 statutory limitation, and trial judge offered to amend his charge and plaintiff's attorney asked him not to. *J. B. Wisdom* v. *V. M. Armstrong* (D.C. App. 1963, 196 A. 2d 88).

Municipal court, on trial of case certified from district court, properly instructed jury that because of such certification $3.000 limit normally applicable to verdict was not applicable and properly refused to allow counsel for defendants to explain that case was certified because of district judge's opinion that case would not justify judgment in excess of $3,000. *The Evening Star Newspaper Co.* v. *R. H. Gray and C. H. Gray* (D.C. Mun. App. 1962, 179 A. 2d 377).

If jury is correctly instructed as to measure of damages, mention of the ad damnum as a limitation on recovery is not improper. *Id.*

Where defendant's counsel twice objected to prosecutor's statement in presence of jury that defendant had not testified and was directed by court to proceed, prosecutor's statement was improper and was not cured by instruction after argument that defendant's failure to take the stand should not be taken against him and that jury should not speculate as to reason for such failure. *Brooks* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 339).

The trial court does not have duty to recast a misleading instruction requested by accused in a criminal case. *Davenport* v. *U.S.* (D.C. Mun. App. 1948, 56 A. 2d 851).

Police officers who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct shall be received with caution. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

30. Joinder of claims

Parties asserting claims arising out of the same transaction or occurrence may join claims in one action under Municipal Court rule. *National City Development Co.* v. *McFerran* (D.C. Mun. App. 1947, 55 A. 2d 342).

31. Judgment notwithstanding verdict

Under rule 46(b) of the Municipal Court, a motion for judgment notwithstanding verdict cannot be granted unless as a matter of law the opponent of the movant failed to make a case and therefore a verdict in movant's favor should have been directed. *McSweeney* v. *Wilson* (D.C. Mun. App. 1946, 48 A. 2d 469).

Granting of new trial is addressed to sound discretion of trial judge. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Under Municipal Court rule 46(b), a motion for judgment notwithstanding verdict can be entertained only where party making it has at trial moved for a directed verdict. *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

32. Judgments of Municipal Court

Judgments of the Municipal Court of the District of Columbia should and must be enforced in that court. *Encyclopaedia Britannica* v. *Jones* (1951, 101 F. Supp. 521).

33. Jurisdiction

Where proprietor of restaurant operated in California under a trade name had expended over $200,000 in advertising during a 12 year period and he claimed that he had built up trade name until it had a nationwide or even international reputation, and primary relief sought by proprietor was a permanent injunction against use of trade name by defendant, which operated restaurant in District of Columbia under same name, value of right sought to be protected against interference exceeded $3,000 and Municipal Court for District of Columbia did not have jurisdiction of action. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Municipal court of the District of Columbia did not lack jurisdiction to entertain action by buyers against seller to rescind contract for purchase of speedboat for $1,000. *Robinson* v. *Carter et al.* (D.C. Mun. App. 1950, 77 A. 2d 174).

34. Law governing

Where there was a conflict between Landlord and Tenant Rule 6 and § 11–737 dealing with costs in a summary proceeding, § 11–737 would prevail. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

35. Law of the case

Where on appeal in an action for abuse of civil process, summary judgment was granted in favor of the defendant, and the action originally filed in the District Court was transferred to the Municipal Court, this jurisdiction requires a final judgment to sustain the application of the rule of the law of the case. The procedural rights and duties of the litigant are governed by the municipal court rules from the time of filing of the case in that court. *Davis* v. *Boyle Brothers* (D.C. Mun. App. 1950, 73 A. 2d 517).

36. Limitations

The fact that in a class B action in the Municipal Court the defendant was not called upon to file an answer or other pleading did not dispense with necessity of timely calling to the attention of trial court that plaintiff's claim was barred by limitations. *Atchison & Keller* v. *Taylor* (D.C. Mun. App. 1947, 51 A. 2d 297).

37. Minute entries

Under rule 48 of Municipal Court stating that action by the court shall be evidenced by a minute entry, the entry is not a condition of the effectiveness of the court's action. *Conrad* v. *Medina* (D.C. Mun. App. 1946, 47 A. 2d 562).

38. New trial

The municipal court's finding, at completion of both parties' evidence, that plaintiff failed to prove amount of damages to which he was entitled, but might supply sufficient evidence to substantiate his claim on new trial, and that, consequently, action was dismissed without prejudice, did not order new trial, especially as such order would have been improper at that stage of case. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493).

39. Non-jury actions, motions

A motion by defendant for directed verdict at conclusion of plaintiff's case in action tried by court without jury is improper, but proper procedure is to move for finding for defendant, and law questions to be decided at conclusion of all evidence should be raised by request for rulings of law, not by motion for directed verdict. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

40. Notice of entry

Rule 66(e) of the Municipal Court providing for notice immediately upon the entry of an order or judgment signed or decided out of the presence of parties or their counsel was not applicable where the judgment was pronounced in the presence of the parties and their counsel. *Conrad* v. *Medina* (D.C. Mun. App. 1946, 47 A. 2d 562).

41. —— Hearing

Notice by defendant to plaintiff's counsel of the taking of plaintiff's deposition by oral examination was sufficient without resort to a subpoena to secure plaintiff's attendance at deposition hearing, since notice to attorney was notice to plaintiff. *Parker* v. *Hot Shoppes* (D.C. Mun. App. 1946, 49 A. 2d 657).

42. Orders appealable

Trial by District Court was a claimed right, rather than an ingredient of cause of action, and District Court's order certifying personal injury case to Municipal Court for District of Columbia for trial, on ground that action would not justify judgment in excess of $3,000 was final

and appealable. *Barnard* v. *Schneider & District of Columbia* (1957, 243 F. 2d 258, 100 U.S. App. D.C. 152).

In suit for balance due on note wherein defendant filed a counterclaim for malicious prosecution, order dismissing counterclaim without express determination that there was no just reason for delay and without express direction for entry of judgment was not a final appealable order. *Wood* v. *G.S.A. Region 3 · Employees F.C.U.* (D.C. Mun. App. 1958, 138 A. 2d 491).

Subject to certain exceptions, jurisdiction of Municipal Court of Appeals for the District of Columbia is limited to review of final orders and judgments. *Id.*

43. Permissive joinder of parties

Where subsection (b) of this section directed Municipal Court to prescribe rules conforming as nearly as might be practicable to Federal Rules of Civil Procedure, following section 723c of 28 U.S.C., proviso not appearing in Rule 20(a) following section 723c of 28 U.S.C. but inserted in Municipal Court Rule 20(a) relating to permissive joinder of parties, to effect that total amount claimed must not exceed court's jurisdiction, was invalid as constituting an attempt to limit court's jurisdiction. *Taylor* v. *Yellow Cab Co. of D.C.* (D.C. Mun. App. 1947, 53 A. 2d 691).

44. Pleadings

The primary purpose of rule of municipal court of the District of Columbia providing that no formal pleadings shall be required, even for initiation of Class B cases, is to assure people of small means ignorant of complexities of pleading and practice, often unrepresented by counsel, their day in court and that fair hearing on merits which in our system of jurisprudence is regarded as fundamental. *Shields* v. *Hawkins* (1942, 125 F. 2d 204, 75 U.S. App. D.C. 172).

After delay of more than a month during which defendant did not demand trial by jury, such demand filed six days, and notice to opposing litigant given two days before time set for trial on the non-jury docket was properly denied. *Kennedy* v. *David* (1940, 109 F. 2d 676, 71 App. D.C. 340).

45. Probate court

Probate court's jurisdiction over proof of wills is exclusive. *Gracie* v. *American Sec. & Trust Co.* (1922, 277 F. 543, 51 App. D.C. 141).

46. Questions for court

The trial judge could not consider weight or credibility of evidence and render judgment for defendant after plaintiff rested his case, without requiring defendants to introduce their evidence, as there was then no fact question before judge, but only law question of legal sufficiency of plaintiff's case. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

47. Real party in interest

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of this section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule 17a restricting right to maintain suit to real party in interest. *Koehne* v. *Harvey* (D.C. Mun. App. 1946, 45 A. 2d 780).

48. Rehearing on exemption claim

Where creditor attached wages of judgment debtor and during pendency of judgment debtor's claim for exemption which was subsequently established by default, creditor through fraud obtained possession of attached wages from employer, court could properly refuse to entertain creditor's motion for rehearing on exemption claim until creditor had restored money to employer. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply Inc. et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

49. Remand

District of Columbia Municipal Court cannot remand cases to District Court of United States for District of Columbia even though it might seem in the interests of justice so to do. *Kaplowitz Bros.* v. *Kahan* (D.C. Mun. App. 1948, 59 A. 2d 795).

50. Reopening case

In action by mother against purchaser of rooming house and rooming house business owned by her daughters to recover value of goods and services claimed by purchaser to have been included in sales price, where court found upon ample evidence that purchaser had agreed to buy disputed items but that no sales price had been agreed upon, court could properly reopen case of its own motion after both sides had rested and case had been taken under advisement to admit evidence as to value of goods notwithstanding mother's case had been based on theory of account stated. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Motion to reopen case to receive testimony of additional witnesses is addressed to sound discretion of trial judge. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

51. Report of proceedings

Where trial court refused to order official reporter and requested that stenographer employed by appellant write up testimony for court at conclusion of two different sessions of trial practice, though not to be approved, could not be deemed reversible error since appellee was not a party to court's action and was not to be prejudiced thereby. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Where outcome of case was not affected by refusal of trial judge to order proceedings reported by one of court's official reporters when requested to do so by defendants, and defendants were not harmed by judge's action except to extent that amount they paid to private reporter was greater than that which an official reporter would have charged, defendants had no ground to complain, since such expenditures were not taxable as costs. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D.C. Mun. App. 1948, 61 A. 2d 632).

Where trial court refused to provide an official stenographer at government's expense to report argument on motion for new trial, court did not abuse discretion where it appeared that the motion was one with which the judge was already familiar and where the proceedings consisted only of legal argument usually unnecessary to report *Campbell* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 191).

52. Review

Questions raised on appeal in action for wrongful arrest and imprisonment as to insufficiency of the evidence, denial of certain instructions, restriction of cross-examination, refusing to permit rebuttal testimony, and in permitting an increase in number of jury challenges, would not be decided where record was incomplete due to absence of a stenographic transcript of the proceedings. *Brown* v. *Plant et al.* (D.C. Mun. App. 1960, 157 A. 2d 289).

In order for an appellate court to pass upon alleged errors of law, a proper record must be presented, and this responsibility cannot be shifted to either the trial court or an appellate court. *Id.*

Equitable defense not urged in the trial court by bill or motion cannot be availed of on appeal. *Saks* v. *B. H. Stinemetz & Son Co.* (1924, 293 F. 1005, 54 App. D.C. 38).

53. Rules of court

Where rules gave defendant right to prepare and serve another subpoena, his failure to act precluded him from claiming that he was denied compulsory process when marshal failed to serve subpoena prepared and signed by court at defendant's request. *J. E. Blair* v. *District of Columbia and United States* (D.C. App. 1964, 200 A. 2d 93).

Although this section authorized Municipal Court for District of Columbia to prescribe court rules, existing rules would prevail until adoption of new rules. *Werth* v. *Nolan* (D.C. 1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9).

In construing Municipal Court Rule based on Federal Rule of Civil Procedure, U.S. Code, title 28, Appendix, Municipal Court of Appeals must give due and careful consideration to federal cases, but must keep clearly in mind different practices in two jurisdictions and avoid such construction of rule as to produce too great de-

parture from established traditions and practice peculiar to Municipal Court. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Where in a suit for possession of real estate, the tenants desired to contest service of process and filed a motion to quash service and demanded jury trial on factual issues raised by such motion and another jury trial on the merits of the case if the issues of the motion were lost, trial judge correctly ruled that it is in the discretion of the court to order that jury trials upon the motion be deferred until the trial on the merits. *Rubenstein* v. *Swagart* (D.C. Mun. App. 1950, 72 A. 2d 690).

It is the policy of the court to give defendant an opportunity to present his case, and the court is prone to adopt a liberal attitude in dealing with default judgment when satisfied of the good faith of the applicant. Such relief is remedial and should be liberally construed. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

54. Statement of claim

If a party is in doubt as to how evidence will develop, he may under rule of Municipal Court set forth two or more statements of his claim alternatively or hypothetically, either in one count or separate counts. *Etty* v. *Federal Consulting Service* (D.C. Mun. App. 1948, 59 A. 2d 692).

55. Stay of proceedings

Where first party sued second party for personal injuries in District Court, and after filing of that complaint, but before service of process, second party filed independent action against first party in Municipal Court for property damages sustained in same collision, Municipal Court had power to stay proceedings until claims of both parties had finally been determined in District Court though it had no right to dismiss second action even if without prejudice. *Coates* v. *Ellis* (D.C. Mun. App. 1948, 61 A. 2d 28).

56. Summary judgment

In action for injuries resulting from an assault allegedly resulting from negligence of the defendant who brought in general liability insurer as a third-party defendant wherein the insurer's motion for a summary judgment in its favor on the third-party complaint was granted because act was not within the coverage of the policy, summary judgment was not binding on the plaintiff and hence it did not establish nonliability by the insurer to pay any judgment plaintiff might eventually recover. *Donaldson* v. *Home Indemnity Co.* (D.C. Mun. App. 1960, 165 A. 2d 492).

The Municipal Court Rule relating to summary judgment is substantially the same as Rule 56, U.S. Code, title 28, Appendix, which has been construed as authorizing summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is and no genuine issue remains for trial. *McConchie* v. *Realty Associates* (D.C. Mun. App. 1947, 54 A. 2d 862).

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts but he must state facts in detail showing that he has personal knowledge. The burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

57. Third party practice

Where third party defendants were not served with notices of the motion for summary judgment, such a defendant was deprived of no rights by such failure to serve notice and cannot complain; and court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

Under rules governing third party practice, the broker and third party defendant had the right to assert defenses to the purchaser's claim against the seller. *Murphy* v. *O'Donnell* (D.C. Mun. App. 1949, 63 A. 2d 340).

58. Vacating default

Allowance or refusal of a motion to set aside a default is within the discretion of the Trial Court but such discretion implies conscientious judgment which takes into account the law, the particular circumstances and competing considerations. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

There is nothing in the record indicating lack of good faith, or a showing of willful disregard or contempt of the process. Although appellant was served only five days before return date, he acted with reasonable diligence after realizing his default and was in court less than twenty days after he was served with a prima facie defense. Reversal of a default judgment was justified. *Id.*

59. Vacating default

Where judgment by default was entered against defendant for failure to answer, and, on defendant's motion, court vacated judgment on ground that it was erroneously entered but denied defendant's request to vacate default, it was not error for court to take ex parte proof for purpose of assessment of damages without notifying defendant. *R. L. Ramey* v. *N. T. Hewitt* (D.C. App. 1963, 188 A. 2d 350).

60. Variance

Under rules of municipal court, a variance between pleading and proof is "material" where it is of a character to take the adversary by surprise and mislead him in the prosecution of his cause of action or defense. *Etty* v. *Federal Consulting Service* (D.C. Mun. App. 1948, 59 A. 2d 682).

There was no "fatal variance" between complaint alleging that defendant wrongfully withheld from plaintiff a sum of money representing a portion of funds which came into defendant's hands for distribution to plaintiff, and proof tending to show that defendant engaged plaintiff to assist defendant in making a sale of steel and agreed to pay plaintiff a sum equal to one-half of commission received by defendant, that through plaintiff's efforts the sale was made, and that defendant received her commission but refused to pay plaintiff the full sum agreed on. *Id.*

61. Waiver of jurisdiction

The Rules of the Municipal Court for the District of Columbia, and the Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, sharply limit acts which constitue a waiver of lack of jurisdiction over the person. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

§ 11–963. Criminal jurisdiction—Commitment.

(a) Except as otherwise expressly provided by this section or other law, the District of Columbia Court of General Sessions has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of:

(1) offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less; and

(2) offenses against municipal ordinances or regulations in force in the District.

(b) The Court of General Sessions does not have jurisdiction of the offenses of libel, conspiracy, or violation of the postal or pension laws of the United States.

(c) In all cases, whether cognizable in the Court of General Sessions or in the District Court, the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or for further examination.

(d) The Court of General Sessions has jurisdiction of all criminal cases properly pending in the Municipal Court for the District of Columbia on January 1, 1963. (Dec. 23, 1963, 77 Stat. 490, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–755a, 23–103, 24–401 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 43, 934, 31 Stat. 1196, 1341; June 30, 1902, ch. 1329, 32 Stat. 537;

June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1943, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–755a of D.C. Code, 1961 ed., which related to criminal jurisdiction of the Municipal Court for the District of Columbia (now District of Columbia Court of General Sessions), successor to the former Police Court and former Municipal Court of the District of Columbia; that part of subsec. (a) of section 11–755 of the Code which, as amended in 1962, vested in District of Columbia Court of General Sessions the criminal jurisdiction that had been vested in the said Municipal Court for the District of Columbia; section 751a of the Code, which changed the name of the court to the District of Columbia Court of General Sessions and provided for substitution of the latter reference for references in other laws to the Municipal Court; and sections 23–103 and 24–401 of the Code.

In subsec. (a), words "Except as otherwise expressly provided by this section or other law" are substituted for the phrase in section 11–755a of the D.C. Code, 1961 ed., "except where otherwise expressly herein provided", for the purpose of clarity. Subsec. (b) of this section states certain exceptions (also taken from section 11–755a) to the jurisdiction conferred in subsec. (a). See, also, section 11–551 et seq. of this revised title relating to jurisdiction of the Juvenile Court.

Section 11–755a of D.C. Code, 1961 ed., as affected by section 11–751a of the Code, conferred jurisdiction on the Court of General Sessions (with the exceptions stated in subsection (b) of this revised section), concurrently with the District Court, of all crimes and offenses committed in the District "not capital or otherwise infamous and not punishable by imprisonment in the penitentiary". Yet section 23–103 of the 1961 ed., and the fourth and fifth sentences of section 24–401 thereof, which were derived from the same act (Mar. 3, 1901, ch. 854, § 934, 31 Stat. 1341), while not couched in jurisdictional language, provided, as affected by section 11–751a of the Code, that when the punishment for an offense might be for more than one year the prosecution "shall" be in the District Court, and that when the maximum punishment was a fine only or imprisonment for one year or less the prosecution "may" be in the Court of General Sessions. This was actually a limitation on the jurisdiction of the Court of General Sessions, and subsec. (a)(1) of this section is taken from the provisions of those sections, rather than from those of section 11–755a quoted above.

The first three sentences of section 24–401 of D.C. Code, 1961 ed., provided as follows: "When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision". These provisions are omitted as superseded by later law. See D.C. Code, 1961 ed., § 24–425. See, also, section 4082 et seq. of Title 18, United States Code.

Changes are made in phraseology and arrangement.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

CROSS REFERENCES

Abandonment of prosecution and discharge of bail, see § 23–104.

Appeals, see § 17–101 et seq.

Arrest under Uniform Act on Fresh Pursuit, commitment on discharge, see §§ 23–501, 23–502.

Bail forfeiture as a lien, see § 15–102.

Bail in habeas corpus proceedings, see § 16–1906.

Bail of fugitives from justice, forfeiture, see §§ 23–404, 23–405.

Cash bail and forfeiture thereof, see § 23–106.

Designation of officer to take bonds and collateral, see § 28–610.

Fugitives from justice, arrest, commitment, bail, discharge, see §23–401 et seq.

Issuance of search warrant, see § 23–301.

Probation system, see § 24–101 et seq.

Professional bondsmen, rules and regulations, see § 28–601 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Change of name as affecting jurisdiction 2
Entry of dwelling 3
Housebreaking 4
In general 1
Limitation of jurisdiction 5
Sale of liquor 6

1. In general

Lower court was invested by Congress with original jurisdiction "of all offenses against municipal ordinances and regulations in force in the District." *Tipp* v. *District of Columbia* (1939, 102 F. 2d 264, 69 App. D.C. 400).

2. Change of name as affecting jurisdiction

Neither act changing name of Municipal Court for District of Columbia to District of Columbia Court of General Sessions and increasing its civil jurisdiction nor later act substantially reenacting prior act created new court and neither affected jurisdiction of existing court as to charges against defendant of reckless driving, leaving after colliding and operation of motor vehicle after revocation of permit. *J. R. Taylor* v. *District of Columbia* (D.C. App. 1964, 197 A. 2d 442).

3. Entry of dwelling

The trial of information charging accused with violation of 22–3102 prohibiting unlawfully entering and unlawfully declining to leave a dwelling house in District of Columbia would not present question of fact "involving title to real property" so as to deprive police court of District of Columbia of jurisdiction of the prosecution. *Fletcher* v. *McMahon* (1941, 121 F. 2d 729, 73 App. D.C. 263, certiorari denied 62 S. Ct. 131, 314 U.S. 662, 86 L. Ed. 531).

4. Housebreaking

Although the police court and the juvenile court of the District had no trial jurisdiction whatever of a charge of housebreaking, the police court had power to examine and commit or hold to bail for trial or further examination all persons, and the juvenile court all minors under 17 years of age, charged with such offense. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

5. Limitation of jurisdiction

Police court had no jurisdiction over crimes punishable by death or by imprisonment in the penitentiary. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

Police court could try criminal cases upon information but it had no jurisdiction of capital or otherwise infamous crimes and could, but it could not sentence to a penitentiary. Direct that a convicted person sentenced to a term of imprisonment not exceeding six months be confined in either the workhouse or jail, but it will not be presumed that appellant will be imprisoned at hard labor. *Cleveland* v. *Mattingly* (1923, 287 F. 948, 52 App. D.C. 374, certiorari denied 43 S. Ct. 521, 262 U.S. 744, 67 L. Ed. 1211).

Police court could, in default of payment of fine, commit to jail for period not exceeding one year. *Palmer* v. *Lenovitz* (35 App. D.C. 303). See, also, *Dodd* v. *Peak* (1931, 47 F. 2d 430, 60 App. D.C. 68).

6. Sale of liquor

Prosecution for first offense under National Prohibition Act may be in the police court by way of information. *Cleveland* v. *Mattingly* (1923, 287 F. 948, 52 App. D.C. 374, certiorari denied 43 S. Ct. 521, 262 U.S. 744, 67 L. Ed. 1211).

Jurisdiction was exclusively in the police court, for the violation of act of Congress of March 3, 1893 (27 Stat. 563) which regulated the sale of liquors, and the then Supreme Court of the District of Columbia had no jurisdiction. *Gassenheimer* v. *District of Columbia* (6 App. D.C. 108).

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–981. Power of judges to issue warrants returnable to Criminal Division—Record.

Each judge of the District of Columbia Court of General Sessions may, at any time, including Sundays and legal holidays, on complaint under oath or actual view, issue warrants returnable to the criminal division of the court against persons accused of crimes and offenses committed in the District of Columbia. In every such case, he shall make a record of his proceedings in a book to be kept for that purpose. The warrants shall be issued free of charge. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–705, 11–751a, 11–755 (Apr. 21, 1906, ch. 1646, 34 Stat. 126; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–705 of D.C. Code, 1961 ed., which, as originally enacted, related to the judges of the first Municipal Court and provided that the warrants referred to should be returnable to the Police Court, with that part of subsec. (a) of section 11–755 thereof, which, prior to amendment thereof by the act of Oct. 23, 1962, provided, in connection with the merger, by the act of Apr. 1, 1942, of the first Municipal Court and the Police Court, to form the second Municipal Court, provided that the judges of the court thus formed should have and exercise the same powers theretofore had or exercised by the judges of the two former courts, and which, after the 1962 amendment, provided that the judges of the District of Columbia Court of General Sessions should have and exercise the same powers and jurisdiction theretofore had or exercised by the judges of the Municipal Court formed from the 1942 merger.

In view of the 1942 merger referred to above, section 11–705 had been reworded in the 1961 edition of the Code to provide for return of the warrants to the criminal division of the Municipal Court, which had criminal jurisdiction comparable with that of the former Police Court.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, referred to above, is also shown as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Like its predecessor (the Municipal Court), the District of Columbia Court of General Sessions, in addition to its special branches, has a civil division and a criminal division.

Changes are made in phraseology.

§ 11–982. Compelling attendance of witnesses—Contempt powers—Subpoenas.

(a) The District of Columbia Court of General Sessions may compel the attendance of witnesses by attachment, and, in any civil or criminal case or proceeding in the court, the judge may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding $50 or imprisonment not exceeding 30 days.

(b) At the request of any party subpoenas for attendance at a hearing or trial in the District of Columbia Court of General Sessions shall be issued by the clerk of the court. A subpoena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena. The form, issuance and manner of service of a subpoena shall be as otherwise prescribed by Rule 45 of the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–756 (Apr. 1, 1942, ch. 207, § 5, 56 Stat. 193; June 29, 1953, ch. 159, § 410, 67 Stat. 180; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, § 4, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 4, 77 Stat. 78).

Section is derived from subsec. (c) of section 11–756 of D.C. Code, 1951 ed. For remainder of section 11–756, see tables.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Contempt 1
Third-party actions 2

1. Contempt

Trial court did not abuse discretion in imposing fine on attorney, despite his apology, for absenting himself from matter assigned and ready for trial. *In re J. G. Saul* (D.C. Mun. App. 1961, 171 A. 2d 751).

2. Third-party actions

Rule pertaining to service of process in third-party actions constituted a specially provided exception to District of Columbia jurisdictional statute, and therefore service of process on a third-party defendant at a place in Maryland within the prescribed 100-mile limitation was valid. *C. W. Broden et ano.* v. *C. W. Bowles* v. *N. D. Daumit* (1964 35 F.R.D. 13).

§ 11–983. Oaths, affirmations, and acknowledgments.

Each judge of the District of Columbia Court of General Sessions may administer oaths and affirmations and take acknowledgments. The clerk of the court and his deputies may administer oaths and affirmations and take acknowledgments in all cases pending in the court or about to be filed therein. Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–712, 11–712 note, 11–751a, 11–754, 11–754a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar 3, 1901, ch. 854, §§ 49, 54, 31 Stat. 1198; Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, §§ 3, 4, 56 Stat. 191, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–66, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the following provisions of D.C. Code, 1961 ed.: Section 11–712, which empowered the clerk and assistant clerk of the former municipal court (before that court's consolidation with the police court in 1942, to form the Municipal Court for the District of Columbia, as provided in section 11–751 of such Code) to administer oaths in all cases pending in that court, or about to be filed therein; acts June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 54, 31 Stat. 1198, set out as a note under said section 11–712 of the Code, and empowering the clerk and deputy clerks of the former police court to administer oaths and affirmations; that part of the sixth paragraph of subsec. (c) of section 11–754 which, in connection with the Municipal Court for the District of Columbia formed out of the consolidation in 1942 of the former municipal court and the police court, provided that the clerk of the court so formed should have and exercise the same powers and authority had or exercised by the clerks of the two former courts; section 11–754a which, as originally enacted, empowered the judges of the former police court to administer oaths to public officers and take acknowledgments of deeds; and that part of subsec. (a) of section 11–755 which, as amended by the act of Oct. 23, 1962, provided that the judges of the District Court of General Sessions should have and exercise the same powers as were theretofore had or exercised by the judges of the Municipal Court for the District of Columbia (prior to the 1962

amendment), the section conferred upon the judges of the Municipal Court for the District of Columbia the same powers theretofore had or exercised by the judges of the former municipal court and the former police court.

Section 11–751a of D.C. Code, 1961 ed., is also shown as one of the sources of this section, as section 11–751a changed the name of the court to the District of Columbia Court of General Sessions.

Section 11–754a of D.C. Code, 1961 ed., when originally enacted, empowered the former Police Court judges to administer oaths and affirmations to "public officers" only. However, act Feb. 17, 1909, ch. 134, 35 Stat. 623 (624), which related to the first Municipal Court, empowered the judges of that court to administer oaths generally, without restriction, and this provision was not repealed upon the merger of the two courts in 1942, and, as stated above, section 11–755(a) of D.C. Code, 1961 ed., prior to its amendment in 1962, extended the powers of the judges of the two former courts to the judges of the Municipal Court formed from the 1942 merger. Therefore, in the consolidated provisions as herein set out, the restriction of the administration of oaths and affirmations, by the judges, to public officers only, is omitted.

While the sixth paragraph of section 11–754(c), D.C. Code, 1961 ed., extended only the powers of the respective clerks of the former Police Court and the former Municipal Court to the clerk of the Municipal Court formed from the 1942 merger, and made no reference to deputy clerks in connection therewith, a consideration of the provisions relating to the merger of the two former courts, as a whole, suggests that the legislative intent was likewise to extend, to the deputy clerks of the successor Municipal Court, whatever powers the deputy or assistant clerks of the two former courts had by statute. Further, according to information received, it is current practice for the judges, clerks, and deputy clerks of the present court to administer oaths and affirmations and to take acknowledgments. Therefore, this section so provides.

§ 11–984. Receipt and care of deposits for costs, and fees—Payment of fines, costs, etc., to clerk—Deposit—Accounting.

(a) The clerk of the District of Columbia Court of General Sessions shall receive and care for all deposits for costs made and fees exacted under the rules governing the fee charges in the civil division of the court, and shall make a weekly deposit with the Board of Commissioners or its authorized representative of all fees earned during the preceding week. The money so collected shall be covered into the Treasury to the credit of the District of Columbia.

(b) The clerk shall return to parties making the deposits specified by subsection (a) of this section any part of a deposit that remains in his hands over and above the earned fees in completed cases, and shall render an itemized statement to the Board of Commissioners or its authorized representative of every fee earned, on forms and in the manner prescribed by the Board or its authorized representative. Any part of a deposit remaining in the clerk's hands for a period of three years, for which claim has not been made by the party entitled to receive it, shall revert to the District of Columbia, and shall be paid forthwith by the clerk to the Board or its authorized representative as part of the revenues of the District.

(c) Fines, penalties, costs, and forfeitures imposed or taxed in the criminal division of the Court of General Sessions shall be paid to the clerk, either with or without process or on process ordered by the court. On the first secular day of each week, the clerk shall deposit with the Board of Commissioners or its authorized representative the total amount thereof collected by him during the week next preceding the date of the deposit, to be covered into the Treasury to the credit of the District of Columbia. The clerk shall render an itemized statement of each deposit upon forms and in the manner prescribed by the Board or its authorized representative.

(d) Moneys collected in the criminal division of the Court of General Sessions remaining in the hands of the clerk for a period of two years or more, for which claim has not been made by the parties entitled thereto, shall revert to the District of Columbia, and shall be paid by the clerk to the Board of Commissioners or its authorized representative, to be covered into the Treasury to the credit of the District of Columbia. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1.)

Revision Notes

Further, the provisions, as herein revised, give effect to section 11–751a of D.C. Code, 1961 ed., which, as stated above, changed the name of the court to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

For remainder of sections 11–754 and 11–755 of D.C. Code, 1961 ed., see tables.

Based on D.C. Code, 1961 ed., §§ 11–710, 11–710a, 11–710c, 11–751a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 6, 58, 31 Stat. 1191, 1199; Feb. 17, 1909, ch. 134, 35 Stat. 624; May 18, 1910, ch. 248, 36 Stat. 404; Sept. 1, 1916, ch. 433, § 12, 39 Stat. 718; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates, with changes in phraseology, sections 11–710a and 11–710c of D.C. Code, 1961 ed., which related to payment, deposit, and accounting for fines, penalties, costs, and forfeitures imposed or taxed in criminal cases by the former Police Court (that is, until the merger act of Apr. 1, 1942, the provisions of those two sections related to that court), and section 11–710, which related to receipt, custody, deposit, and accounting for fees and costs paid into the Municipal Court in civil cases prior to the consolidation of the two courts into a single Municipal Court.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

As set out herein, the provisions relate to the Court of General Sessions, which, under section 11–755 of D.C. Code, 1961 ed., as amended by section 2 of the act of Oct. 23, 1962, assumed the jurisdiction and powers of the Municipal Court for the District of Columbia. Prior to the 1962 amendment, the same section, enacted in 1942, had provided for the assumption, by the Municipal Court for the District of Columbia, of the jurisdiction and powers of the two courts merged by the 1942 act; that is, the Police Court and the first Municipal Court. The Court of General Sessions has several branches, including a civil division and a criminal division.

Sections 11–710, 11–710a and 11–710c of D.C. Code, 1961 ed., provided that the moneys be deposited by the clerk with the collector of taxes, and that (in the case of sections 11–710 and 11–710c) the itemized statements to accompany the deposits be upon such forms and in such manner as prescribed by the auditor of the District. However, a number of changes in the administration of the District of Columbia have since taken place. Presidential Reorganization Plan No. 5 of 1952 abolished a number of offices, including the Office of the Auditor and the Office of the Collector of Taxes, and transferred the functions thereof, and in each case the functions of officers, employees, and subordinate agencies, to the Board of Commissioners of the District of Columbia. The Plan authorized the Commissioners to delegate any of the functions so transferred to any member of the Board or

to any other officer, employee, or agency of the Government of the District of Columbia, except the courts thereof. The Board's Reorganization Order No. 1, dated July 1, 1952, continued the functions, powers, etc., until otherwise ordered, in the officer, agency, or employee by whom or which they were being performed and exercised at the time of the taking effect of the Plan. The Board's Reorganization Order No. 3, dated Aug. 28, 1952, established a Department of General Administration with a Director at its head, and, along with other offices and functions, transferred to that Department the Office of the Auditor and the Office of the Collector of Taxes and the respective functions of each. The Board's Reorganization Order No. 19, dated Nov. 10, 1952, established in the Department of General Administration an Internal Audit Office and transferred to it some of the personnel under the existing Auditor, and their functions. The Board's Reorganization Order No. 20, also dated Nov. 10, 1952, established in the Department of General Administration a Finance Office with a Finance Officer at its head, and created therein several boards and offices, including the Office of Collector of Taxes and an Accounting Office. It transferred to the Finance Office nearly all the functions of the former Office of the Collector of Taxes, and, as amended by the Board's Reorganization Order No. 25, dated Dec. 30, 1952, apparently all the functions of divisions, positions, etc. (including the Accounting Division) under the responsibility of the then existing Auditor that were not transferred to the Internal Audit Office by the Board's Reorganization Order No. 19. Reorganization Order No. 20 abolished the Office of Auditor and the former Office of the Collector of Taxes.

Reorganization Order No. 121, 57–3276, dated Dec. 12, 1957, as amended, superseded said Reorganization Order No. 20, as amended, but continued within the Department of General Administration the Finance Office, headed by the Finance Officer.

In accordance with the reorganizational changes described above, it would seem that the duties prescribed in sections 11–710 and 11–710c of D.C. Code, 1961 ed., with respect to the auditor, are now performed by the Finance Office, Department of General Administration, and that the reference in each of those two sections, as well as in section 11–710a of D.C. Code, 1961 ed., to the collector of taxes, is also obsolete. Under Part IV of the above-mentioned Reorganization Order No. 121, the functions of the Finance Office are divided among the Office of the Finance Officer, the Property Tax Division, the Revenue Division, the Treasury Division, the Enforcement Division, the Accounting Division, and the Processing Division.

However, the above offices were established by orders of the Board of Commissioners, and they may be changed at any time. Under Presidential Reorganization Plan No. 5, referred to above, the ultimate responsibility for the delegated functions is in the Board of Commissioners. Therefore, references in sections 11–710, 11–710a and 11–710c of D.C. Code, 1961 ed., to the auditor and/or the collector of taxes are, in this section, changed to "Board of Commissioners [or "Board"] or its authorized representative".

Section 11–710a of D.C. Code, 1961 ed., provided that the moneys paid over by the clerk of the municipal court (formerly, the reference was to the police court) be paid by the collector of taxes "for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia". Pursuant to sections 47–126 and 47–130a of the D.C. Code, 1961 ed., subsec. (d) of this section, as revised, provides that the moneys shall be paid to the Board of Commissioners, or its authorized representative, to be covered into the Treasury to the credit of the District of Columbia.

Cross Reference

Disposition of fees, see § 47–126.

§ 11–985. Audit of accounts.

The Board of Commissioners of the District of Columbia, or its authorized representative, shall audit the accounts of the clerk of the District of Columbia Court of General Sessions at the end of every quarter, and in the performance of this duty shall have access to all books, papers, and records of the court. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–710b, 11–751a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 59, 31 Stat. 1199; Apr. 1, 1942, ch. 207, §1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. S. 88–60, § 1, 77 Stat. 77).

The provisions of section 11–710b of D.C. Code, 1961 ed., related to the Police Court until, by the act of Apr. 1, 1942, that court was merged with the first Municipal Court to form the second Municipal Court, after which they related to the Municipal Court. In this section, they are made applicable to the Court of General Sessions, to which the name of the Municipal Court was changed by the act of Oct. 23, 1962, § 1 (section 11–751a of D.C. Code, 1961 ed., also cited, because of the change in name, as one of the sources of this section).

In this section, "Board of Commissioners of the District of Columbia, or its authorized representative," is substituted for "auditor", and words "and to make prompt report thereof in writing to the commissioners of the District of Columbia" are omitted as no longer necessary to retain in view of this substitution. See revision note under section 11–984 herein.

Changes are made in phraseology.

Chapter 11.—DOMESTIC RELATIONS BRANCH OF COURT OF GENERAL SESSIONS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–1101. Continuation of Branch.
11–1102. Judges—Assignment.
11–1103. Sessions.

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

11–1121. Clerk and other personnel.
11–1122. Duties of clerk regarding docket.

SUBCHAPTER III.—JURISDICTION

11–1141. Exclusive jurisdiction.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

11–1161. Powers of Branch.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–1101. Continuation of Branch.

The Domestic Relations Branch of the District of Columbia Court of General Sessions shall continue as a branch in the civil division of the court. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–758 (Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Apr. 11, 1956, ch. 204, § 101, 70 Stat. 111; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–758 of D.C. Code, 1961 ed., which established (in 1956) the Domestic Relations Branch in the Municipal Court for the District of Columbia, with that part of the first sentence of subsec. (a) of section 11–755 of the Code, which, as amended by the act of Oct. 23, 1962, also provided that the Court (referred to therein by its new name of District of Columbia Court of General Sessions) should have a Domestic Relations Branch. For remainder of section 11–755, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources

of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The section, as revised, continues the Domestic Relations Branch of the Court of General Sessions, and provides that it shall constitute a branch in the civil division of that court. See revision note under section 11–901.

§ 11–1102. Judges—Assignment.

The Domestic Relations Branch of the District of Columbia Court of General Sessions shall consist of three judges of the court, who shall serve in that branch during their tenures of office, but if the chief judge of the court finds the work of the Domestic Relations Branch will not be adversely affected thereby, he may assign any judge of the Domestic Relations Branch to perform the duties of any other judge of the court. The chief judge of the court may assign any other judge of the court to serve temporarily in the Domestic Relations Branch if he finds the work of the Domestic Relations Branch requires the assignment. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–760 (Apr. 11, 1956, ch. 204, § 103(b), 70 Stat. 112; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

At the beginning, the words "The Domestic Relations Branch of the District of Columbia Court of General Sessions shall consist of three judges of the Court, who shall serve in that branch during their tenures in office" are substituted for "The judges appointed to the additional positions authorized by the amendments to section 11–752 shall during their tenures of office serve as judges of the Domestic Relations Branch" for the purpose of clarification. Section 103(a) of the above-cited act of Apr. 11, 1956, amended section 11–752 of D.C. Code, 1961 ed., to increase the number of judges of the Municipal Court (now, the Court of General Sessions) from 13 to 16, and the above-cited 103(b) of that act, from which this section is derived, provided that the judges appointed to the additional positions so provided for should, during their tenures of office, serve as judges of the Domestic Relations Branch. See section 11–902 herein and revision note thereunder.

§ 11–1103. Sessions.

The Domestic Relations Branch, with at least one judge in attendance, shall be open for the transaction of business every day of the year except Saturday afternoons, Sundays, and legal holidays, and, if deemed necessary, may also hold night sessions. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1).

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–768 (Apr. 11, 1956, ch. 204, § 112, 70 Stat. 113).

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

§ 11–1121. Clerk and other personnel.

The judges of the Domestic Relations Branch, with the approval of the chief judge of the District of Columbia Court of General Sessions, may appoint and remove a clerk and such other personnel as may be necessary for the operation of the Branch. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–761 (Apr. 11, 1956, ch. 204, §104, 70 Stat. 112; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

§ 11–1122. Duties of clerk regarding docket.

The clerk serving in the Domestic Relations Branch of the District of Columbia Court of General Sessions shall keep a separate docket for the Branch, in which he shall record the steps taken at each stage of actions or proceedings instituted or conducted in the Branch. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–764 (Apr. 11, 1956, ch. 204, § 108, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

SUBCHAPTER III.—JURISDICTION

§ 11–1141. Exclusive jurisdiction.

(a) The Domestic Relations Branch of the District of Columbia Court of General Sessions and each judge sitting therein has exclusive jurisdiction of:

(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

(2) applications for revocation of divorce from bed and board;

(3) civil actions to enforce support of minor children;

(4) civil actions to enforce support of wife;

(5) actions seeking custody of minor children;

(6) actions to declare marriages void;

(7) actions to declare marriages valid;

(8) actions for annulments of marriage;

(9) determinations and adjudications of property rights, both real and personal, in any action hereinabove referred to in this section, irrespective of any jurisdictional limitation imposed on the Court of General Sessions;

(10) proceedings in adoption; and

(11) proceedings under the Uniform Reciprocal Enforcement of Support Act, chapter 3 of Title 30.

(b) This chapter does not affect or diminish the jurisdiction of the Juvenile Court of the District of Columbia, or of any judge presiding therein. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1.)

JURISDICTION IN CERTAIN DOMESTIC RELATIONS MATTERS

Section 16 of act Dec. 23, 1963, provided as follows:

"Chapter 11 of Title 11 of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to

17], does not divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any action, application or proceeding, as described in section 11–1141 of the Code, filed in the District Court prior to the effective date of section 105 of the act of April 11, 1956 (ch. 204, 70 Stat. 112), to the same extent as if chapter 11 had not been enacted."

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–762, 11–769 (Apr. 11, 1956, ch. 204, §§ 105, 113, 70 Stat. 112, 113; Sept. 9, 1959, Pub. L. 86–241, 73 Stat. 473; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–762 and 11–769 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11–762 of D.C. Code, 1961 ed., contained an additional paragraph which provided as follows: "Nothing in this chapter [that is, in the act of Apr. 11, 1956, cited above, which established the Domestic Relations Branch of the Municipal Court and vested in it certain jurisdiction which previously had been exercised by the United States District Court for the District of Columbia] shall be construed to divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any such action, application or proceeding filed in such court prior to the effective date of this section to the same extent as if this chapter had not been enacted". That paragraph is transitory and is omitted from this revised section as inappropriate in a code of general and permanent law, but the jurisdiction and power of the District Court so preserved is continued in a separate section of the present bill. The words "effective date of this section", as used in the omitted paragraph, referred to the effective date of section 105 of the act of Apr. 11, 1956, from which section 11–762 of D.C. Code, 1961 ed., was derived. Under section 115 of that act, section 105 thereof was made effective 30 days after the appointment and qualification of the three additional judges for the Municipal Court authorized by section 103(a) thereof. Section 103(a) had, by amending act Oct. 25, 1949, ch. 706, § 1, 63 Stat. 887 (D.C. Code, 1961 ed., § 11–752), increased the number of judges of the Court from 13 to 16, and section 103(b) thereof (D.C. Code, 1951 ed., § 11–760) provided for service of the three additional judges, appointed under the amendment, in the Domestic Relations Branch of the Court. See sections 11–902 and 11–1102 in this revision, and revision notes thereunder.

Item (11), relating to proceedings under the Uniform Reciprocal Enforcement of Support Act, is new to this section, but does not state new law. That act was adopted for the District of Columbia by act July 10, 1957, Pub. L. 85–94, 71 Stat. 285, and the Domestic Relations Branch of the Municipal Court (now, the Court of General Sessions) has jurisdiction of proceedings thereunder. Heretofore classified to section 11–1601 et seq. of D.C. Code, 1961 ed., it will be reclassified as chapter 3 of Title 30 thereof.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Adjudication of property rights

Section 16–409 giving Domestic Relations Branch of Municipal Court, on grant of an absolute divorce, power to award property held by parties jointly or by entireties to one or the other of the parties, or to apportion it, was not applicable to wife's claim against her husband for individual property. *Posnick* v. *Posnick* (D.C. Mun. App. 1960, 160 A. 2d 804).

Under amendment to this section of Domestic Relations Branch Act giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, Domestic Relations Branch of Municipal Court has authority, on granting a limited divorce, to award, or partition the property, real or personal, held by the parties jointly or by entirety, in the same manner in which it may act on granting an absolute divorce. *Id.*

Under amendment to this section of Domestic Relations Branch Act, giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, the Domestic Relations Branch has jurisdiction in a divorce action to adjudicate all property disputes between the parties. *Id.*

2. Authority to partition real property

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entireties. *Hogan* v. *Hogan* (1957, 250 F. 2d 412, 102 U.S. App. D.C. 87).

3. Burden of proof in custody proceedings

In proceeding for custody of child who had been adopted by natural mother's sister and brother-in-law and who after death of sister and brother-in-law had been living with surviving subsequent wife of brother-in-law, evidence that subsequent wife was unfit person and had not properly cared for child was admissible; nevertheless the natural mother had no burden to prove this; to impose such a burden on mother improperly transferred nature of hearing into adversary proceeding rather than a proceeding where best interests of child were paramount. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

4. Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

5. Custody of minors

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

The Domestic Relations Branch of the Municipal Court of District of Columbia is bound by but does not have jurisdiction to specifically enforce custody orders of the United States District Court holding Probate Court. *Id.*

6. Equity powers

Domestic Relations Branch of Municipal Court is not vested with general equity powers under this section vesting it with exclusive jurisdiction over actions for divorce, and civil actions to enforce support of minor children, and court has no power to modify a private support agreement entered into by parties before their absolute divorce in Alabama except that court can, after proper hearing, entertain wife's request for increased support for children, but only for such increase during their minority. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1960, 161 A. 2d 137).

7. Increased support

Where divorced wife in the Domestic Relations Branch of Municipal Court sought an increase in support for the children of the parties over the amount agreed upon in agreement between the parties prior to their absolute

divorce, notwithstanding the domestic branch was without jurisdiction to enforce the agreement, it should have granted a hearing on the wife's request for increased support for the children. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 2d 525).

8. Jurisdiction

Statute providing that Domestic Relations Branch of Municipal Court of District of Columbia and each judge sitting therein shall have exclusive jurisdiction over civil actions to enforce support of minor "children" includes all children, legitimate and illegitimate. *C. Johnson* v. *E. Johnson et al.* (1963, 324 F. 2d 884, — U.S. App. D.C. —).

Where natural father acknowledges paternity, illegitimate children are entitled to civil remedies for support available in Domestic Relations Branch of Court of General Sessions, though they retain all remedies presently available to them in Juvenile Court. *Id.*

"Children," within statute providing that Domestic Relations Branch of Municipal Court shall have exclusive jurisdiction over actions to enforce support of minor children, includes illegitimate children and Domestic Relations Branch had jurisdiction of action to enforce order directing him to support minor children born out of wedlock, where natural father had acknowledged paternity. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

Statute creating Domestic Relations Branch and providing that the United States District Court for the District of Columbia would not be deprived of jurisdiction to enforce judgments and orders in pending actions requires that new cases are to go before new court, and cases filed with the United States District Court before cutoff date were to remain and be decided there. *M. R. Hatton* v. *L. D. Hatton* (D.C. Mun. App. 1961, 171 A. 2d 256).

Wife who had been awarded divorce decree in United States District Court for District of Columbia, before enactment of statute creating Domestic Relations Branch, could not bring subsequent action against husband in the Domestic Relations Branch for separate maintenance and support of children. *Id.*

Exclusive jurisdiction of suit against divorced husband to enforce support for wife and minor son was in Domestic Relations Branch of Municipal Court, rather than District Court. *S. S. Wagner* v. *C. A. Wagner* (1961, 293 F. 2d 533, 110 U.S. App. D.C. 345).

For purposes of jurisdiction in suits to enforce support, divorced wife is deemed to be a wife. *Id.*

District Court should not have dismissed complaint to enforce support for divorced wife and minor son, but should have transferred the case to the Municipal Court for trial. *Id.*

At least in transition period following transfer of jurisdiction from one court to another, a court should not dismiss suit which can properly be transferred. *Id.*

The Domestic Relations Branch of the Municipal Court for the District of Columbia, rather than the Civil Division, had jurisdiction of action by wife for support arrearages for herself and son under written separation agreement. *J. Gaissert* v. *C. Gaissert* (D.C. Mun. App. 1961, 174 A. 2d 195).

Domestic Relations Branch of Municipal Court of District of Columbia had exclusive jurisdiction and equitable power to adjudicate divorced wife's claim for enforcement of separation agreement provision relating to benefits for children, as support or claims against husband's property, even though action was instituted before enactment of statute clarifying jurisdiction. *V. S. David* v. *L. S. Blumenthal* (1961, 292 F. 2d 765, 110 U.S. App. D.C. 272).

Counterclaim of divorced wife seeking money judgment against divorced husband in Domestic Relations Branch of the Municipal Court for the District of Columbia for arrears in payments due from husband under foreign divorce decree for support of children was a "civil action to enforce support of minor children" within this section providing that Domestic Relations Branch shall have exclusive jurisdiction over all "civil actions to enforce support of minor children." *Thomason* v. *Thomason* (1959, 274 F. 2d 89, 107 U.S. App. D.C. 27).

United States District Court for the District of Columbia does not have jurisdiction of a divorce action although it involves real property rights. *Harris* v. *Harris, Sr.* (1959, 272 F. 2d 511, 106 U.S. App. D.C. 282).

Property conveyed to spouses by entireties can be ordered partitioned or sold, or disputes can otherwise be adjudicated, by District Court for District of Columbia in cases where limited divorce decree is in existence; and, likewise, property held by entireties can be awarded in part, or in its totality, to one tenant, depending upon facts, evidence, etc., in case; and District Court has such power of partition or award even though divorce was granted by Municipal Court. *Hipp* v. *Hipp* (1960, 191 F. Supp. 299).

In action by divorced father for custody of minor children, wherein children's maternal grandmother who had custody of the children counterclaimed to recover the amount alleged to be owing by father under separation agreement for support of children which had been adopted by Nevada court which granted the divorce decree, the counterclaim was properly denied on ground that the Domestic Relations Branch of the Municipal Court lacked jurisdiction to award judgment on payments due under decree of a foreign court. *Hitchcock* v. *Thomason* (D.C. Mun. App. 1959, 148 A. 2d 458).

This section vesting the Domestic Relations Branch with exclusive jurisdiction over actions for divorce, etc., and vesting it with so much of the power as is now vested in the United States District Court for the District whether in law or in equity as is necessary to effectuate the purposes of "this chapter" does not vest in such branch any power to modify or enforce a private agreement between divorced spouses for support of the children, since such power could be exercised only if the court had been granted generally equity power and it was obvious that Congress had granted no such power. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 525).

9. Purpose

One of the purposes of this section providing that Domestic Relations Branch of the Municipal Court for the District of Columbia shall have exclusive jurisdiction over all civil actions to enforce support of minor children is to provide for support of minor children who are involved in divorce proceedings. *Thomason* v. *Thomason* (1958, 274 F. 2d 89, 107 U.S. App. D.C. 27).

10. Welfare of child

Where natural mother's sister and brother-in-law adopted child, the sister died and the brother-in-law died survived by his subsequent wife who disclosed no real intent to maintain child, the natural mother and subsequent wife were strangers who had no legal vested right to custody of child; the controlling consideration was welfare of child. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

In child custody proceeding before Domestic Relations Branch of District of Columbia Municipal Court, whether controversy arises between parents, parents and strangers, or between strangers, probable welfare of child is controlling consideration and all questions of superior rights are entirely subordinated. *Id.*

11. Wife's petition for support

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

Where no divorce, absolute or limited, is granted, court has no power or authority to partition or award to one spouse real or personal property held by the entireties, and 1959 statute which gave Domestic Relations Branch authority in divorce actions to adjudicate all property

disputes did not authorize partition when no divorce was granted. *C. H. Ridgely* v. *R. M. Ridgely* (D.C. App. 1963, 188 A. 2d 296).

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–1161. Powers of Branch.

The Domestic Relations Branch of the District of Columbia Court of General Sessions has all of the legal and equitable powers necessary to effectuate the purposes of this chapter, chapters 3 and 9 of Title 16, chapters 1 and 3 of Title 30, and section 32–786, including but not limited to, the power to:

(1) issue restraining orders and injunctions, writs of habeas corpus and ne exeat, and all other writs, orders, and decrees; and

(2) enforce and execute its judgments, orders, and decrees.

(Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–763 (Apr. 11, 1956, ch. 204, § 106, 70 Stat. 112; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from all of section 11–763 of D.C. Code, 1961 ed., except the second sentence of subsec. (b) thereof. That sentence, which related to the legal status of judgments of the Domestic Relations Branch of the Municipal Court (now, the Court of General Sessions), is set out elsewhere in this revised part. See tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provisions of section 11–763 of D.C. Code, 1961 ed., that are rewritten and carried into this section, read as follows:

"(a) The Domestic Relations Branch is hereby vested with so much of the power as is now vested in the United States District Court for the District of Columbia, whether in law or in equity, as is necessary to effectuate the purposes of this chapter [actually, subchapter IIA of chapter 7 of the Code], including but not limited to, the power to issue restraining orders, injunctions, writs of habeas corpus, and ne exeat, and all other writs, orders, and decrees.

"(b) The Domestic Relations Branch shall have the same power to enforce and execute judgments, orders and decrees entered by it as is now vested in the United States District Court for the District of Columbia.".

In this section, the provisions are rewritten to eliminate the references to the District Court as superfluous, and, for the purpose of clarification, to insert references to the particular provisions with which the Domestic Relations Branch is concerned, and which had been affected or amended by other provisions of the 1956 act creating the Branch. In this connection, a reference to chapters 1 and 3 of Title 30 is also inserted. Chapter 1 of that title relates to marriages, but, considering section 11–1141 of this revised part, it apparently contains some provisions, such as provisions relating to annulment, which would come within the jurisdiction of the Domestic Relations Branch of the Court of General Sessions. Chapter 3 of that title contains, or will contain, the Uniform Reciprocal Enforcement of Support Act, which was adopted for the District of Columbia in 1957 (see revision note under section 11–1141 of this revised part). Heretofore, it has been classified to section 11–1601 et seq. of D.C. Code, 1961 ed., but it will be reclassified as chapter 3 of Title 30 thereof.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Counsel fees 1
Equity powers 2
Increased support 3
Jurisdiction 4
Wife's petition for support 5

1. Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

2. Equity powers

Domestic Relations Branch of Municipal Court is not vested with general equity powers under section 11–762 vesting it with exclusive jurisdiction over actions for divorce, and civil actions to enforce support of minor children, and court has no power to modify a private support agreement entered into by parties before their absolute divorce in Alabama except that court can, after proper hearing, entertain wife's request for increased support for children, but only for such increase during their minority. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1960, 161 A. 2d 137).

3. Increased support

Where divorced wife in the Domestic Relations Branch of Municipal Court sought an increase in support for the children of the parties over the amount agreed upon in agreement between the parties prior to their absolute divorce, notwithstanding the domestic branch was without jurisdiction to enforce the agreement, it should have granted a hearing on the wife's request for increased support for the children. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 2d 525).

4. Jurisdiction

The Domestic Relations Branch of the Municipal Court of the District of Columbia is bound by but does not have jurisdiction to specifically enforce custody orders of the United States District Court holding Probate Court. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Section 11–762 vesting the Domestic Relations Branch with exclusive jurisdiction over actions for divorce, etc., and vesting it with so much of the power as is now vested in the United States District Court for the District whether in law or in equity as is necessary to effectuate the purposes of "this chapter" does not vest in such branch any power to modify or enforce a private agreement between divorced spouses for support of the children, since such power could be exercised only if the court had been granted generally equity power and it was obvious that Congress had granted no such power. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 2d 525).

5. Wife's petition for support

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

Chapter 13.—SMALL CLAIMS AND CONCILIATION BRANCH OF COURT OF GENERAL SESSIONS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–1301. Continuation of Branch.
11–1302. Service of Court of General Sessions judges—Rotation.
11–1303. Sessions.

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

Sec.
11–1321. Clerk.
11–1322. Separate docket—Entries.
11–1323. Records and reports.

SUBCHAPTER III.—JURISDICTION

11–1341. Exclusive jurisdiction of small claims—Limitations.
11–1342. Settlement disputes by arbitration and conciliation.
11–1343. Certification of cases by Court of General Sessions judges—Recertification.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–1301. Continuation of Branch.

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions shall continue as a branch in the civil division of the court. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–801 (Mar. 5, 1938, ch. 43, § 1, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 1, 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–801 of D.C. Code, 1961 ed., which in 1938 established the Small Claims and Conciliation Branch in the Municipal Court prior to the merger, by the act of Apr. 1, 1942, of that court with the Police Court to form the Municipal Court for the District of Columbia, with the final phrase of subsec. (b) of section 11–756 of the Code, the effect of which was to continue that branch within the second Municipal Court thus formed, and with part of the first sentence of subsec. (a) of section 11–755 of the Code, which, as amended by the act of Oct. 23, 1962, also provided that the Court (referred to therein by its new name of District of Columbia Court of General Sessions) should have a Small Claims and Conciliation Branch. For remainder of sections 11–755 and 11–756, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The section, as revised, continues the Small Claims and Conciliation Branch of the Court of General Sessions, and provides that it shall constitute a branch in the civil division of that court. See revision note under section 11–901.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Purpose

In creating the small claims branch of the trial court, Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

The principal purpose of legislation establishing Small Claims Branch of Municipal Court for the District of Columbia was to provide informality and the kind of friendly atmosphere not found in ordinary procedure, and to accomplish this purpose conciliation procedure was prescribed in every case. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1934, 34 A. 2d 609).

The purpose of legislation establishing small claims court was to secure prompt and inexpensive adjudication of small claims free from technicalities of procedural law, and Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Interstate Bankers Corporation* v. *Kennedy* (1943, 33 A. 2d 165).

§ 11–1302. Service of Court of General Sessions judges—Rotation.

One or more judges of the District of Columbia Court of General Sessions shall serve in the Small Claims and Conciliation Branch for such periods and in such order of rotation as the chief judge of the court determines. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–803 (Mar. 5, 1938, ch. 43, § 3, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–803 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

With respect to who may determine how many judges shall serve in the Branch, the periods of service, and the order of rotation, "chief judge of the court" is substituted for "judges of the court" to conform with section 11–904 herein (D.C. Code, 1961 ed., § 11–754) under which the chief judge has the duty of assigning judges to the divisions and several branches of the court.

Minor changes are made in phraseology.

§ 11–1303. Sessions.

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, with a judge in attendance, shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall also hold at least one night session during each week. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–816 (Mar. 5, 1938, ch. 43, § 16, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–816 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Discretion

Where it was custom of court to call daily calendar and dispose of uncontested, ex parte, and preliminary matters before hearing of trials, dismissal of case during preliminary call for want of prosecution when counsel asked for 20 minutes time to prepare for trial was an abuse of discretion. *Hollywood Credit Clothing Co., Inc.*, v. *Hamdon* (D.C. Mun. App. 1951, 79 A. 2d 163).

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

§ 11–1321. Clerk.

The District of Columbia Court of General Sessions may assign a deputy clerk or other assistant to the clerk of the court to serve as clerk of the Small Claims and Conciliation Branch. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–802 (Mar. 5, 1938, ch. 43, § 2, 52 Stat., 103; Apr. 1, 1942, ch. 207, §§ 1, 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–802 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

The language of this section is new, but the provisions were implicit in clause (c) in section 11–802 of D.C. Code, 1961 ed., which was a section containing definitions of terms used in chapter 8 (§11–801 et seq.) of Title 11 of D.C. Code, 1961 ed., in which provisions relating to the Small Claims and Conciliation Branch of the Municipal Court (now, Court of General Sessions) were set out. Clause (c) defined "Clerk" as meaning "the clerk or any assistant clerk of said municipal court assigned to said branch".

The remaining provisions of section 11–802 of D.C. Code, 1961 ed., which defined "Branch", "Judge" and "Court", are omitted, as all provisions of chapter 8 of Title 11 of the Code, to which the definitions related, that are carried into this revised part, are rewritten to render the retention of the definitions unnecessary.

§ 11–1322. Separate docket—Entries.

The clerk of the Small Claims and Conciliation Branch shall keep a separate docket for the Branch, in which he shall record every proceeding and ruling had in each case. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–806 (Mar. 5, 1938, ch. 43, § 6, 52 Stat. 105; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Secton is derived from section 11–806 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of Gneral Sessions.

Changes are made in phraseology.

§ 11–1323. Records and reports.

The clerk of the Small Claims and Conciliation Branch shall maintain a daily record of all transactions had therein and shall prepare and transmit to the Attorney General of the United States a monthly report in detail showing the number and nature of all such transactions. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–813 (Mar. 5, 1938, ch. 43, § 13, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–813 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

SUBCHAPTER III.—JURISDICTION

§ 11–1341. Exclusive jurisdiction of small claims—Limitations.

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions has exclusive jurisdiction over all cases within the jurisdiction of the court in which the amount of the plaintiff's claim or the claimed value of personal property in controversy does not exceed $150 exclusive of interest, attorney fees, protest fees, and costs. This jurisdiction does not include actions for recovery of the possession of real estate, whether or not such actions include a claim for arrears of rent, or personalty, or both arrears of rent and personalty. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–804 (Mar. 5, 1938, ch. 43, § 4, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Sept. 6, 1961, Pub. L. 87–203, § 1, 75 Stat. 471; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from subsec. (a) of section 11–804 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755, 11–756 and 11–804, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amount of claim as controlling 1
Defenses 2
Discretion 3
Emergency Price Control Act 4
Jurisdiction 5

1. Amount of claim as controlling

The amount of plaintiff's claim and not amount of his possible or even probable ultimate recovery determines forum within the Municipal Court in which a plaintiff's action is to be lodged. *Goldberg* v. *Roumel* (D.C. Mun. App. 1945, 40 A. 2d 253).

2. Defenses

An improvident or extravagant purchase may not be rescinded simply because it is contrary to the dictates of good judgment and a court has no basis for relieving one party from contract provisions to which he has agreed, merely because they operate disadvantageously as to him. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

3. Discretion

Where it was custom of court to call daily calendar and dispose of uncontested, ex parte, and preliminary matters before hearing of trials, dismissal of case during preliminary call for want of prosecution when counsel asked for 20 minutes time to prepare for trial was an abuse of discretion. *Hollywood Credit Clothing Co., Inc.* v. *Hamdon* (D.C. Mun. App. 1951, 79 A 2d 163).

4. Emergency Price Control Act

The small claims branch of the Municipal Court for the District of Columbia had jurisdiction to entertain action by customer to recover $50 for alleged violation of price regulation promulgated under the Price Control Act, 50 U.S.C. App. § 925 (e). *Hall* v. *Chaltis* (1943, 31 A. 2d 699).

5. Jurisdiction

In an action brought to recover a balance on a sale of a pair of shoes for $15.00, the court not only had jurisdiction, but had exclusive jurisdiction and it was error to hold otherwise. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

§ 11–1342. Settlement of disputes by arbitration and conciliation.

In order to effect the speedy settlement of controversies, and with the consent of all parties thereto, the Small Claims and Conciliation Branch may settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. The judges of the Branch may also act as referees or arbitrators, either alone or in conjunction with other persons, pursuant to rule 53 of the Federal Rules of Civil Procedure, or under Title 9, United States Code, or otherwise. A judge, officer, or employee of the District of Columbia Court of General Sessions may not accept any fee or compensation in addition to his salary for services performed pursuant to this section. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–804 (Mar. 5, 1938, ch. 43, § 4, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, §1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 83–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from subsec. (b) of section 11–804 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755, 11–756 and 11–804, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Reference to sections 16–1701 to 16–1719 of D.C. Code, 1961 ed., is changed to "rule 53 of the Federal Rules of Civil Procedure", as that rule superseded the Code sections cited.

Reference to the "United States Arbitration Act of February 12, 1925 (U.S.C., 1934 ed., Title 9, sections 1 to 15)", is replaced in this revised section by "Title 9, United States Code". Title 9 of the United States Code, which relates solely to arbitration, and which originally represented a classification of the cited 1925 act, was enacted into law by act July 30, 1947, ch. 392, § 1, 61 Stat. 669, and section 2 of the 1947 act repealed the 1925 act. See Title 9 in the United States Code.

Changes are made in phraseology.

§ 11–1343. Certification of cases by Court of General Sessions judges—Recertification.

When the interests of justice seem to require, and all parties consent thereto, a judge of the District of Columbia Court of General Sessions may certify a case to the Small Claims and Conciliation Branch for conciliation, or to endeavor to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. With the consent of all parties the trial of the case may be completed in the Branch, or in the absence of their consent shall be recertified to another judge of the court for trial. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–810 (Mar. 5, 1938, ch. 43, § 10, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–810 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited, as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

Chapter 15.—JUVENILE COURT OF THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–1501. Continuation of court—Court of record—Seal.
11–1502. Appointment, qualifications, tenure, salaries, and oath of judges.
11–1503. Administration of court—Absence, disability, disqualification, or death of judges.
11–1504. Terms.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

11–1521. Clerk—Compensation, bond, oath, and duties.
11–1522. Administration of oaths by clerk.
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11–1581. Contempt powers.
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11–1587. Audit of accounts.
11–1588. Court quarters.
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SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–1501. Continuation of Court—Court of record—Seal.

(a) The Juvenile Court of the District of Columbia shall continue as a court of record in the District.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88–241, § 1.)

REFERENCE TO JUDGE OF JUVENILE COURT IN OTHER LAWS

Section 17(c) of act Dec. 23, 1963, provided as follows: "Whenever in any law of the United States reference is made to the judge of the juvenile court of the District of Columbia the reference shall be construed to mean any judge of the court."

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–901, 11–904 (Mar. 19, 1906, ch. 960, §§ 1, 3, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Section consolidates section 11–901 of D.C. Code, 1961 ed., and that part of section 11–904 thereof which provided that the Juvenile Court should be a court of record and should have a seal.

This section, as revised, continues the Juvenile Court established by section 11–901 of D.C. Code, 1961 ed.

The remainder of section 11–904 is carried into § 11–1582.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality 1
Construction with other laws 2
Drug Users' Act not criminal statute 3
Due process 4
Juveniles 5
Nature of proceedings 6
Proceedings under oath 7

1. Constitutionality

Provision in Juvenile Court Act, this subchapter, that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Briggs* v. *United States of America* (1955, 226 F. 2d 350, 96 U.S. App. D.C. 392).

The social considerations underlying this subchapter and the informality of procedure permitted under it are not incompatible with according to one accused of crime the rights guaranteed him by the Constitution. *Evans* v. *Rives* (1942, 126 F. 2d 633, 75 U.S. App. D.C. 242).

2. Construction with other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

3. Drug Users' Act not criminal statute

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

4. Due process

Where proceedings wherein juvenile was found to have participated in law violations while on probation from Juvenile Court, were in compliance with statutory requirements, there was no denial of due process of law. *White* v. *Reid* (1954, 125 F. Supp. 647).

5. Juveniles

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

6. Nature of proceedings

A proceeding in the Juvenile Court is not a criminal proceeding. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

7. Proceedings under oath

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

§ 11–1502. Appointment, qualifications, tenure, salaries, and oath of judges.

(a) The Juvenile Court shall consist of a chief judge and two associate judges learned in the law and appointed by the President of the United States by and with the advice and consent of the Senate.

(b) A person may not be appointed as judge of the court, unless:

(1) he has been a member of the bar of the District of Columbia for a period of five years preceding his appointment;

(2) during a period of ten years immediately preceding his appointment, he has been a resident of the District of Columbia or of the metropolitan area of the District for at least five years, of which not less than three years shall immediately precede his appointment; and

(3) he has a broad knowledge of social problems and procedures and an understanding of child psychology.

For the purpose of this subsection, the term "metropolitan area of the District" means Montgomery and Prince Georges Counties in Maryland, and Arlington and Fairfax Counties and the cities of Alexandria and Falls Church in Virginia.

(c) Each judge appointed after March 9, 1962, shall serve for a term of ten years or until his successor is appointed and qualifies.

(d) The salary of the chief judge shall be equal to the salary of the chief judge of the District of Columbia Court of General Sessions, and the salary of each associate judge shall be equal to the salary of an associate judge of that court.

(e) Each judge, before entering upon the duties of his office, shall take the oath prescribed for judges of courts of the United States. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–920 (Mar. 19, 1906, ch. 960, § 19, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (601); July 11, 1955, ch. 302, § 4, 69 Stat. 290, Mar. 9, 1962, Pub. L. 87–413, § 1, 76 Stat. 21; Aug. 24, 1962, Pub. L. 87–596, § 2(b), 76 Stat. 398).

Section is derived from all of section 11–920 of D.C. Code, 1961 ed., except the first and second sentences of subsec. (c) thereof. Those sentences are carried into section 11–1503 herein.

Changes are made in phraseology and arrangement.

§ 11–1503. Administration of court—Absence, disability, disqualification, or death of judges.

(a) The chief judge of the Juvenile Court shall be responsible for the administration of the court. During the temporary absence or disability of the chief judge, the associate judge of the court designated by the chief judge or acting chief judge of the United States District Court for the District of Columbia shall be responsible for the administration of the court.

(b) Except as provided by subsection (a) of this section, when a judge of the Juvenile Court dies, or is absent, ill, or disabled to serve in any case, the chief judge or acting chief judge of the United States District Court for the District of Columbia shall designate one of the judges of the District of Columbia Court of General Sessions to serve as a judge of the Juvenile Court until the vacancy is filled or until the removal of such disability, and the return of the regular judge of that court. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–920, 11–921 (Mar. 19, 1906, ch. 960, §§ 19, 20, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (601); July 11, 1955, ch. 302, § 4, 69 Stat. 290; Mar. 9, 1962, Pub. L. 87–413, §§ 1, 3(a), 76 Stat. 21, 22; Aug. 24, 1962, Pub. L. 87–596, § 2(b), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates the first and second sentences of subsec. (c) of section 11–920 of D.C. Code, 1961 ed., with

section 11–921 of the Code. Remainder of section 11–920 is carried into section 11–1502 herein.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions. See subsec. (b) of this revised section.

The exception clause is inserted at the beginning of subsec. (b) for the purpose of clarification.

Changes are made in phraseology.

§ 11–1504. Terms.

The Juvenile Court shall hold a term on the first Monday of every month and continue the term from day to day as long as may be necessary for the transaction of its business. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–905 (Mar. 19, 1906, ch. 960, § 4, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Decisions under former law

Court may extend term. *Young* v. *Hesse* (1929, 30 F. 2d 896, 58 App. D.C. 362).

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

§ 11–1521. Clerk—Compensation, bond, oath, and duties.

(a) The Juvenile Court shall appoint from the eligible list of the Civil Service Commission, a clerk of the court, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

(b) The clerk shall give bond, with surety, and take the oath of office prescribed by law for clerks of the United States district courts.

(c) The clerk shall:

(1) keep accurate and complete accounts of moneys collected from persons under the supervision of the probation department, give receipts therefor, and make reports thereon as the chief judge directs; and

(2) perform other duties and keep other records as prescribed by the chief judge.

(Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code. 1961 ed., §§ 11–922, 11–925 (Mar. 19, 1906, ch. 960, §§ 21, 24, 34 Stat. 77, 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, §§ 3(c), 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates that part of section 11–922 of D.C. Code, 1961 ed., relating to appointment and compensation of the clerk of the Juvenile Court, with that part of section 11–925 of the Code relating to bond and oath of the clerk and his general duties. For remainder of sections 11–922 and 11–925, see tables.

Changes are made in phraseology.

§ 11–1522. Administration of oaths by clerk.

The clerk of the Juvenile Court may administer oaths and affirmations. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–925 (Mar. 19, 1906, ch. 960, § 24, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Section is derived from that part of section 11–925 of D.C. Code, 1951 ed., which authorized the clerk of the Juvenile Court to administer oaths and affirmations.

Changes are made in phraseology.

§ 11–1523. Director of Social Work—Compensation—Qualifications—Duties.

(a) The Juvenile Court shall appoint, from the eligible list of the Civil Service Commission, a Director of Social Work, and shall fix his compensation in accordance with the Classification Act of 1949, as amended. The Director must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended.

(b) Under the administrative direction of the chief judge, the Director of Social Work shall:

(1) have charge of all the social work of the court; and

(2) in association with other social agencies of the District of Columbia, study sources and causes of delinquency and assist in developing and correlating community-wide plans for the prevention and treatment of delinquency.

(Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–922, 11–923 (Mar. 19, 1906, ch. 960, §§ 21, 22, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, §§ 3 (c) and (b), 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106 (a), 63 Stat. 972).

Section consolidates part of section 11–922 of D.C. Code, 1961 ed., with section 11–923 thereof. For remainder of section 11–922, see tables.

Changes are made in phraseology.

CROSS REFERENCES

Advances to chief probation officer of juvenile court, see § 47–116.

Probation department, see § 24–101 et seq.

§ 11–1524. Supervisor of Probation and other probation officers—Compensation—Qualifications—Duties of Probation Department and officers.

(a) The Juvenile Court shall appoint, from eligible lists of the Civil Service Commission, a Supervisor of Probation and such other probation officers as it deems necessary, and shall fix their compensation in accordance with the Classification Act of 1949, as amended. The Supervisor of Probation and probation officers must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended.

(b) Under the direction of the Director of Social Work, the Supervisor of Probation shall organize, direct, and develop the work of the Probation Department of the court.

(c) The Probation Department shall:

(1) make such investigations as the court directs;

(2) keep written records of investigations and submit them to a judge of the court or deal with them as he directs;

(3) use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition; and

(4) keep informed concerning the conduct and condition of each person under its supervision and report thereon to the court as it directs, and the Department shall keep full records of its work.

(d) For the purposes of this chapter, probation officers have the powers of police officers, and have such duties, as may be assigned to them in the course of performing the functions of the Probation Department. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–922, 11–924 (Mar. 19, 1906, ch. 960, §§ 21, 23, 34 Stat. 77, 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, § 4, 76, Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates part of section 11–922 of D.C. Code, 1961 ed., with section 11–924 thereof. For remainder of section 11–922, see tables.

Changes are made in phraseology.

§ 11–1525. Other court employees.

The Juvenile Court shall appoint, from eligible lists of the Civil Service Commission, such other employes of the court as it deems necessary, and shall fix their compensation in accordance with the Classification Act of 1949, as amended. Employees appointed pursuant to this section must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–922 (Mar. 19, 1906, ch. 960, § 21, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, § 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section is derived from part of section 11–922 of D.C. Code, 1961 ed.

The provision for appointment of a deputy clerk is omitted as unnecessary and covered by the general provisions carried into this section.

Changes are made in phraseology.

For remainder of section 11–922 of D.C. Code, 1961 ed., see tables.

§ 11–1526. Rules governing conduct of personnel.

The Juvenile Court may issue all necessary orders and writs in aid of its jurisdiction as prescribed by law, and may adopt and publish rules governing its procedure and the conduct of its officers and employees. The rules shall be enforced and construed beneficially for the remedial purposes of this chapter and chapter 23 of Title 16. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–930 (Mar. 19, 1906, ch. 960, § 29, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Section is derived from that part of section 11–930 of D.C. Code, 1961 ed., following the semicolon therein, which related to the formulation of rules, by the Juvenile Court for the conduct of its officers and employees.

Changes are made in phraseology.

For remainder of section 11–930 of D.C. Code, 1961 ed., see tables.

SUBCHAPTER III.—JURISDICTION

§ 11–1551. Jurisdiction of children and minors—Retention.

(a) Except as herein otherwise provided, the Juvenile Court has original and exclusive jurisdiction of all cases and in proceedings:

(1) concerning a child as defined by section 16–2301:

(A) who has violated a law, or has violated an ordinance or regulation of the District of Columbia;

(B) who is habitually beyond the control of his parent, guardian, or custodian;

(C) who is habitually truant from school or home;

(D) who habitually so deports himself as to injure or endanger himself or the morals or safety of himself or others;

(E) who is abandoned by his parent, guardian, or custodian;

(F) who is homeless or without adequate parental support or care, or whose parents, guardian, or custodian neglects or refuses to provide support and care necessary for his health or welfare;

(G) whose parent, guardian, or custodian neglects or refuses to provide or avail himself of the special care made necessary by his mental condition;

(H) who associates with vagrants, or vicious or immoral persons;

(I) who engages in an occupation, or is in a situation, dangerous to life or limb or injurious to the health or morals of himself or others;

(2) subject to applicable statutes of limitation, concerning a minor 18 years of age or older who is charged with:

(A) having violated any law; or

(B) having violated any ordinance or regulation of the District of Columbia—

prior to his having become 18 years of age; and

(3) to determine the custody or guardianship of the person of a child coming within the provisions of this section and subchapter I of chapter 23 of Title 16; but the provisions of this clause do not deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when the custody is incidental to the determination of causes pending therein.

(b) When jurisdiction is obtained by the Juvenile Court in the case of a child under 18 years of age at the time of the offense, the child shall continue under the jurisdiction of the court until he becomes 21 years of age unless the court discharges him prior thereto. This subsection does not affect the jurisdiction of other courts over offenses committed by the child after he reaches the age of 18 years. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–906, 11–907 (Mar 19, 1906, ch. 960, §§ 5, 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735).

Section consolidates parts of sections 11–906 and 11–907 of D.C. Code, 1961 ed.

Section 11–906 of D.C. Code, 1961 ed., provided that chapter 9 of Title 11 thereof (which was the chapter dealing with the Juvenile Court) should apply to any person under the age of 18 years who committed any of the acts, or was in any of the conditions or circumstances enumerated in that section, and then, among other definitions, defined "child", as used in that chapter, as meaning a person under the age of 18 years. Section 11–907 of the Code then merely provided in par. (a) of subsec. 1 thereof that the Juvenile Court had original and exclusive jurisdiction of all cases and in proceedings "Concerning any child coming within the terms and provisions of this

chapter". Inasmuch as the enumeration in section 11–906 stated the conditions and circumstances under which the court has jurisdiction, the provisions of the two sections, as consolidated in subsec. (a) of this section, are set out in jurisdictional language only, and thus state in one place the jurisdiction of the Court over the matters described.

In clause (2) of subsec. (a), words "minor 18 years of age or older" are substituted for "person under 21 years of age" for the purpose of clarification.

In subsec. (b), words "at the time of the offense" are inserted, on recommendation of the Judge of the Juvenile Court, after "under 18 years of age", to make it clearer that any person who came under the court's jurisdiction could be continued under that jurisdiction until his 21st birthday.

Subsec. (c) of section 11–907 of D.C. Code, 1961 ed., which vested in the Juvenile Court jurisdiction of proceedings to determine the paternity of children born out of wedlock and to provide for the support of such children, and which provided for jury trial in the proceedings or the waiver thereof, is omitted as superseded and covered by sections 11–951 et seq. of D.C. Code, 1961 ed. For provisions of those sections, as carried into other sections herein, and for remainder of sections 11–906 and 11–907, see tables.

Changes are made in phraseology.

CROSS REFERENCES

Commitments as feeble-minded person, see § 32–620.

Designation of officers to take bonds and collateral, see § 23–610.

Enforcement of laws for compulsory school attendance, see § 31–213.

Enforcement of laws governing professional bondsmen, see § 23–612.

Jurisdiction of prosecutions for nonsupport of wife and minor children, see § 22–903.

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1. Applicability of Federal Rules

The Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States* v. *White* (1957, 153 F. Supp. 809).

2. Arraignment without unnecessary delay

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States* v. *White* (1957, 153 F. Supp. 809).

3. Confessions

Damaging admissions by juvenile while in police custody and before juvenile court's waiver of exclusive jurisdiction should be excluded from evidence in criminal proceeding. *W. L. Harling* v. *United States* (1961, 295 F. 2d 161, 111 U.S. App. D.C. 174).

4. Construction

Petition alleging that child had been using narcotics and associating with narcotic addict was sufficient to give juvenile court jurisdiction over child. *In the matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

The section making it an offense to willfully cause, encourage or contribute to any condition which would bring a child within provisions of this subchapter relating to Juvenile Court and this section making this subchapter applicable to children engaged in described conduct or way of life must be read together. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

5. Construction with other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an instutition for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *Id.*

6. Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

7. Evidence

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care. *In re F. E. Mullen and M. A. Mullen* (D.C. Mun. App. 1958, 144 A. 2d 919).

In prosecution for causing, encouraging and contributing to delinquency of minor female, evidence warranted finding that defendant willfully contributed to female's delinquency by deliberately carrying on an illicit and immoral relationship with female, irrespective of her real age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Commitment of girl to psychiatric school on strength of alleged professional opinion of doctor, whom girl had no opportunity to cross-examine and whose professional status was not established in record, was error, especially in view of fact that mother's counsel was permitted to repeat what doctor had told him and urge acceptance of doctor's recommendation's. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

In proceeding wherein parents are charged with inadequate care of minor, public policy and right of child require that if charge of neglect is true the child be removed from control of parents and purpose of proceeding is not punishment of parents but protection of the child, and if liberty can be said to be restrained that is only an incident of, not the purpose of, the removal. *Id.*

Evidence in juvenile court proceeding sustained finding of court's jurisdiction over infant who disclosed signs of narcotics use, and admitted narcotics use. *In the matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

8. Jurisdiction

Evidence in juvenile court proceeding sustained finding of court's jurisdiction over infant who disclosed signs of narcotics use, and admitted narcotics use. *In the matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

Alleged error in admission of physician's report stating that child was addicted to heroin was harmless, in juvenile court proceeding, in view of other evidence sufficient to support finding of jurisdiction over child. *Id.*

9. Nature of proceedings

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to such proceedings. *Pee* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

10. Proof of age

In prosecution for willfully causing, encouraging and contributing to delinquency of female under age 18, the age of the female could be proved by her testimony and it was not required that there be documentary evidence of her age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

11. Protection from parental neglect

The law will protect the child from parental neglect even as against natural parent where necessary. *In re Custody of a Minor* (1958, 250 F. 2d 419, 102 U.S. App. D.C. 94).

A hearing in Juvenile Court to determine whether a child is delinquent is not criminal or penal in character, but adjudication on status of child in nature of guardianship imposed by state as parens patriae to provide child care and guidance normally furnished by child's natural parents. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, where daughter had retained counsel, permitting another attorney, who represented mother's intersts, to enter an appearance for daughter was prejudicial error, especially in view of fact that attorney representing mother was permitted to make hearsay statement concerning conversation with girl's personal physician, thereby divulging information of privileged nature. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

12. Purpose

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

13. Right to counsel

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1958, 250 F. 2d 419, 102 U.S. App. D.C. 94).

Juvenile Court is required to advise juvenile of right to counsel or to assure itself that such right has been intelligently waived. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

The rights of a child, defined by statute as person under 18 years old, with respect to representation by counsel at delinquency hearing in Juvenile Court are not the same as those of any person, whether infant or adult, subjected to criminal prosecution. *Id.*

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, testimony of Social Service Department employee concerning her ex parte report containing résumé of her conversations with girl's physician, which conversations included privileged matter in form of interpretation of doctor's prognosis and his recommendation that girl enroll in such school was hearsay and improperly admitted, and girl's statutory right of privilege was improperly invaded. *Id.*

14. —— Jury trial

A proceeding in which infant children were found to be without adequate parental care and were committed to Board of Public Welfare was a statutory proceeding to determine best interests of children and was not a criminal or common-law proceeding, and neither children nor their mother had a constitutional right to jury trial. *In re Lambert* (D.C. Mun. App. 1952, 86 A. 2d 411).

15. "Willful"

In prosecution for willfully causing, encouraging and contributing to delinquency of minor female the court properly charged that the word "willful" meant more than voluntary and implied an evil mind or intent. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957. 134 A. 2d 338).

§ 11–1552. Transfer from other courts.

When during the pendency of a criminal or quasi-criminal charge against a person under 21 years of age, in another court, it is ascertained that the person was under the age of 18 years at the time of the alleged offense, the court shall forthwith transfer the case, together with all the papers, documents, and testimony connected therewith, to the Juvenile Court. The court making the transfer shall order the minor to be taken forthwith to the place of detention designated by the Juvenile Court or to that court itself, or release the minor to the custody of a suitable person to appear before the Juvenile Court at a time designated. The Juvenile Court shall thereupon proceed to hear and dispose of the case in the same manner as if it had been instituted in that court in the first instance. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–913 (Mar. 19, 1906, ch. 960, § 12, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (599)).

Changes are made in phraseology.

§ 11–1553. Waiver of jurisdiction in case of felony and transfer of case.

When a child 16 years of age or over is charged with an offense which if committed by a person 18 years of age or over is a felony, or when a child under 18 years of age is charged with an offense which if committed by a person 18 years of age or over is punishable by death or life imprisonment, a judge may, after full investigation, waive jurisdiction and order the child held for trial under the regular procedure of the court which would have jurisdiction of the offense if committed by a person 18 years of age or over; or the other court may exercise the powers conferred upon the Juvenile Court by this chapter and subchapter I of chapter 23 of Title 16 in conducting and disposing of such cases. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–906, 11–914 (Mar. 19, 1906, ch. 960, §§ 5, 13, 34 Stat. 73, 75; June 1, 1938, ch. 309, 52 Stat. 596 (599); May 15, 1947, ch. 56, 61 Stat. 92; Mar. 9, 1962, Pub. L. 87–413, § 3(d), 76 Stat. 22).

Section consolidates section 11–914 of D.C. Code, 1961 ed., with part of section 11–906 thereof. For remainder of section 11–906, see tables.

By substituting "person 18 years of age or over" for "adult", and "child under 18 years of age" for "child", it is not necessary to retain the definitions of "adult" and "child" which were contained in subsec. (b) of section 11–906 of D.C. Code, 1961 ed. See revision not under section 11–1551 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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Delay of proceedings 2
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Due process 5
Full investigation 6
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Jurisdiction to test validity of waiver 8
Motive of court 9
Presumption 10
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Waiver of jurisdiction 12

.50. Confessions prior to waiver

Confessions and admissions made by juveniles to police and to robbery victim at police station were properly excluded on trial of juveniles following waiver

of jurisdiction by juvenile court and transfer to district court for trial. *T. G. Edwards* v. *United States* (1964, 330 F. 2d 849, 117 U.S. App. D.C. 383).

Although confessions and admissions made by juveniles to police and to robbery victim at police station were properly excluded at trial of juveniles following waiver of jurisdiction by juvenile court, robbery victim was properly permitted to testify concerning facts of crime and to identify defendants in open court despite contention that victim would not have been able to identify juveniles in court room had he not earlier been allegedly advised by police that they had confessed and produced stolen property. *Id.*

1. Constitutionality

Ordering juvenile to be held for trial under regular procedure in the District Court for the District of Columbia after juvenile court has conducted an inquiry does not offend the constitutional standard of fundamental fairness. *In the matter of M. A. Kent, Jr.* (D.C. Mun. App. 1962, 179 A. 2d 727).

Provision in Juvenile Court Act, this subchapter, that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Briggs* v. *United States of America* (1955, 226 F. 2d 350 96 U.S. App. D.C. 392).

2. Delay of proceedings

Proceedings against a child should not be delayed in order that it may become possible to try him as adults are tried. *Williams* v. *Huff* (1944, 142 F. 2d 91, 79 U.S. App. D.C. 31).

3. Dismissal of indictment

Where 17-year-old defendant against whom four complaints had been filed in juvenile court charging him with three assaults with intent to commit robbery and one robbery, had used no weapon and there was no violence connected with the crimes, all of which occurred in a relatively short period of time, and there was nothing in defendant's background to indicate any proclivity towards antisocial behavior and he had no past criminal or juvenile record, indictment against defendant would be dismissed, the record expunged and district court would proceed in accordance with juvenile court procedural rules. *United States* v. *Anonymous* (1959, 176 F. Supp. 325).

4. Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgement that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

Where minor defendant appeared in Juvenile Court and denied "being involved," and Juvenile Court waived jurisdiction to federal District Court, defendant was not placed in "jeopardy" in Juvenile Court and could be prosecuted in District Court for robbery. *Johnson* v. *United States* (1959, 269 F. 2d 769, 106 U.S. App. D.C. 102).

When respondent acknowledged his guilt and juvenile court found him within its jurisdiction as a delinquent child and continued case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on same charge. *United States* v. *Dickerson* (1958, 168 F. Supp. 899).

5. Due process

Alleged violations of procedural due process after waiver of jurisdiction by Juvenile Court Judge over juvenile defendant, assuming that defendant did not intelligently waive preliminary hearing, being without counsel, was cured by return of a valid indictment by the grand jury. *United States* v. *Stevenson* (1959, 170 F. Supp. 315).

6. Full investigation

Procedure followed by juvenile court in waiving jurisdiction over juvenile in connection with some 14 charges after investigation was not violative of statute concerning waiver of jurisdiction of a juvenile. *In the matter of M. A. Kent, Jr.* (D.C. Mun. App. 1962, 179 A. 2d 727).

No formal hearing is required to be held before the juvenile court on question of waiver of jurisdiction to the District Court, and investigation called for by this section is an administrative process within the juvenile court and no particular standards are prescribed. *Wilhite* v. *United States* (1960, 281 F. 2d 642, 108 U.S. App. D.C. 279).

"Full investigation" which this section requires before juvenile court can waive jurisdiction to district court includes informal hearings to determine whether to waive jurisdiction and jeopardy does not attach at that point. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

In proceeding on motion to dismiss indictment and to have court proceed in the same manner that juvenile court would have proceeded had it retained jurisdiction of 17-year-old defendant, against whom four complaints had been filed in juvenile court charging him with three assaults with intent to commit robbery and one robbery, records of juvenile court established a full investigation had been conducted prior to waiver of jurisdiction by juvenile court. *United States* v. *Anonymous* (1959, 176 F. Supp. 325).

This section providing that if child 16 years of age or older is charged with offense, which would amount to a felony in case of an adult, or any child charged with offense which, if committed by adult, is punishable by death or life imprisonment, judge may, after full investigation, waive jurisdiction and order child held for trial under regular procedure of court which would have jurisdiction of such offense if committed by adult, does not require, as prerequisite to waiver, the Juvenile Court Judge personally make "full investigation" prescribed by this section, and the only requirement is that judge be fully advised of relevant facts, by such means as are available to him through various branches of the court, so that he may intelligently exercise his discretion. *United States* v. *Stevenson* (1959, 170 F. Supp. 315).

This section relating to waiver by Juvenile Court Judge of jurisdiction over juvenile offender does not require that quasi-judicial or judicial hearing be conducted by judge before making the waiver, and the "full investigation" required by this section can be conducted by the judge on an ex parte basis. *Id.*

7. Habeas corpus

Habeas corpus would not lie, prior to indictment and trial, to raise collaterally question of whether, before waiving its jurisdiction over juvenile, juvenile court made the "full investigation" recited in its waiver, though motion in district court to dismiss indictment for want of full investigation by juvenile court could be made on sufficient allegations. *M. A. Kent, Jr.* v. *C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

8. Jurisdiction to test validity of waiver

The district court is the appropriate forum to test the validity of a waiver of jurisdiction by the juvenile court. *M. A. Kent, Jr.* v. *C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

9. Motive of court

Where there was more than adequate rational basis in records before Juvenile Court Judge when he waived jurisdiction over juvenile offender, it was immaterial that judge may have been motivated in whole or in part by a desire to relieve the Juvenile Court of a part of its burden. *United States* v. *Stevenson* (1950, 170 F. Supp. 315).

10. Presumption

Juvenile Court Judge would be presumed to have acted on records before him, when he waived jurisdiction over juvenile offender. *United States* v. *Stevenson* (1959, 170 F. Supp. 315).

11. Right to counsel

Juvenile offender had no right to be represented by an attorney when Juvenile Court Judge made investigation to determine whether to waive jurisdiction over the juvenile offender. *United States* v. *Stevenson* (1959, 170 F. Supp. 315).

12. Waiver of jurisdiction

Where jurisdiction of a juvenile is waived for trial in the District Court for a felony, the District Court may redetermine the question whether a juvenile should be proceeded against as such or tried as an adult offender; in making this determination, the court must consider the individual case before it and not refuse to exercise its discretion because of a preconceived notion that the statute which gives it the right so to do is "foolish" or that the statutory discretion should never be exercised affirmatively when a person is charged with robbery and rape. *Franklin, Price and Brooks* v. *United States* (1964, 330 F. 2d 205, — U.S. App. D.C. —).

Rape case would not be remanded so that trial court could exercise its discretion on request that defendant be tried as a juvenile, where defendant did not make his request until after jeopardy in the criminal trial had attached through the impaneling of the jury. *Id.*

Notwithstanding no petition had been filed and no summons had been issued under juvenile court procedure, juvenile court could waive jurisdiction after full investigation, and District Court acquired jurisdiction over offender. *United States* v. *J. L. Green* (1961, 200 F. Supp. 687).

Waiver certificate of juvenile court is presumed to be regular. *Id.*

Waiver of jurisdiction over juvenile offender by Juvenile Court Judge was amply supported, not only by summary of Director of Social Work, who reported to the judge, but also by underlying data prepared at time of juvenile offender's several appearances before Juvenile Court over period of more than two years. *United States* v. *Stevenson* (1959, 170 F. Supp. 315).

Juvenile Court has authority to waive jurisdiction to District Court in certain cases, and it may exercise that authority either after a preliminary hearing, or after an ex parte investigation, but waiver of jurisdiction must take place before jeopardy attaches and may not occur after respondent has acknowledged his guilt and his plea has been accepted or after case has been tried or trial has been started in Juvenile Court. *United States* v. *Dickerson* (1958, 168 F. Supp. 899).

§ 11–1554. Jurisdiction of persons 18 years of age or over.

The Juvenile Court has original and exclusive jurisdiction to determine cases of persons 18 years of age or over charged with willfully contributing to, encouraging, or tending to cause by any act or omission, a condition which would bring a child under the age of 18 years within the provisions of section 11–1551. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–906, 11–907 (Mar. 19, 1906, ch. 960, §§ 5, 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 64 Stat. 1240).

Section consolidates part of section 11–906 of D.C. Code, 1961 ed., with the first sentence of subsec. 2 of section 11–907 of the Code. For remainder of sections 11–906 and 11–907, see tables.

By substituting "persons 18 years of age or over" for "adults", and "child under the age of 18 years" for "child", it is unnecessary to retain the definitions of the terms "adult" and "child" which were contained in section 11–906(b) of D.C. Code, 1961 ed. See revision note under section 11–1551 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Bastardy

Juvenile court of District of Columbia has jurisdiction of bastardy proceedings. *Fillipone* v. *United States* (1925, 2 F. 2d 928, 55 App. D.C. 126).

In bastardy proceedings in juvenile court, failure to pay for support of child is not punishable with commitment to jail. *Peak* v. *Calhoun* (1934, 69 F. 2d 989, 63 App. D.C. 113).

The juvenile court, which has exclusive jurisdiction of action to determine parentage of illegitimate child and fix putative father's responsibility for child's support may not entertain complaint filed by mother over two years after child's birth. *Williams* v. *Amann* (D.C. 1943, 33 A. 2d 633).

2. Coercion of jury

In prosecution of defendant for being the father of an illegitimate child, where trial court, after submission of case to jury at 5:10 p.m., had the jury recalled to the courtroom at 7:20 p.m. and upon being informed it was doubtful as to whether jury might arrive at a verdict inquired as to whether there had been any change in the last hour, and upon receiving an affirmative reply stated he would like the jury to deliberate further to see if they could agree on a verdict, such conversation by trial judge did not constitute coercion of the jury. *Gibson* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 494).

3. Confessions

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is duty bound thoroughly to investigate circumstances under which such statements were made. *Id.*

4. Constitutionality

Provision in Juvenile Court Act, this subchapter, that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Briggs* v. *United States of America* (1955, 226 F. 2d 350, 96 U.S. App. D.C. 392).

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

5. Construction with other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *Id.*

6. Contract regarding illegitimate child

An action by illegitimate child's mother against putative father for amount due under his contract to pay mother weekly sum for child's support in consideration of her agreement not to assert her statutory right of action for child's maintenance is not a "bastardy proceeding" within juvenile court's exclusive jurisdiction, but an

action for damages from breach of promise made on good and valid "consideration" and hence within Municipal Court's jurisdiction. *Williams* v. *Amann* (1943, 32 A. 2d 633).

7. Double jeopardy

When respondent acknowledged his guilt and juvenile court found him within its jurisdiction as a delinquent child and continued case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on same charge. *United States* v. *Dickerson, Jr.* (1958, 168 F. Supp. 899).

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

8. Historical

This subchapter was limited by the Compulsory Education Act of June 8, 1906, and the juvenile court's jurisdiction was limited to persons between the ages of 14 and 17 years. *Brown* v. *Sellers* (1923, 292 F. 655, 53 App. D.C. 378, certiorari denied 44 S. Ct. 7, 263 U.S. 702, 68 L. Ed. 514).

9. Infants

The terms of the statute are not limited in application to persons of any given class, but for the purpose of declaring that persons standing in loco parentis should be included within the provisions of the act. *Frizzell* v. *United States* (1925, 2 F. 2d 398, 55 App. D.C. 103).

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson* v. *Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

The police court and the juvenile court had concurrent jurisdiction to examine, commit, or admit to bail, minors under 17 years, charged with felonies. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

Courts do not look with favor on the construction of a law, if not unavoidable, which declares children illegitimate. *Thomas* v. *Murphy* (1925, 107 F. 2d 268, 71 App. D.C. 69).

This section fully defines jurisdiction of the juvenile court for the District of Columbia, and such jurisdiction relates only to cases which involve children. *In re Wilson* (1948, 79 F. Supp. 816).

10. Nature of proceedings

The fundamental philosophy of juvenile court laws is that a delinquent child should be considered and treated not as a criminal but as a person requiring care, education, and protection, and the primary function of juvenile courts, properly considered, is not conviction or punishment for crime but crime prevention and delinquency rehabilitation, and hence procedures before such courts may not become the basis for criminal records. *Thomas* v. *U.S.* (1941, 121 F. 2d 905, 74 App. D.C. 167).

A proceeding in the Juvenile Court is not a criminal proceeding *In re Rene Whisaker* (1955, 134 F. Supp. 864).

The Juvenile Court Act, this subchapter, did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

11. Nonsupport

Since the jurisdiction conferred upon the juvenile court for the District of Columbia relates only to cases involving children arising under this chapter, the juvenile court exceeded its jurisdiction in attempting to hold defendant for nonsupport of his wife only; the welfare of no children being involved. *In re Wilson* (1948, 79 F. Supp. 816).

12. Powers

Juvenile court of the District has jurisdiction of an incorrigible girl, in proceedings to commit her to the National Training School. *Richardson* v. *Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

The court has inherent power to pass on a motion for new trial. *Young* v. *Hesse* (1929, 30 F. 2d 986, 58 App. D.C. 362).

This section providing that when there is proper original jurisdiction, the Juvenile Court shall have continuing jurisdiction over children committed by it during their minority, and that the court from time to time upon petition of interested persons may modify or revoke its orders at any time, was intended to give that court continuing jurisdiction in all child commitment cases in which the court had original jurisdiction. *In the Matter of Cecelia Lem* (D.C. Mun. App. 1960, 164 A. 2d 345).

13. Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

14. Separate proceeding

Where commitment in truancy case had been set aside and the case dismissed, jurisdiction of infant could not be based thereon in a separate proceeding against infant. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

15. Waiver of jurisdiction

Juvenile Court has authority to waive jurisdiction to District Court in certain cases, and it may exercise that authority either after a preliminary hearing, or after an ex parte investigation, but waiver of jurisdiction must take place before jeopardy attaches and may not occur after respondent has acknowledged his guilt and his plea has been accepted or after case has been tried or trial has been started in Juvenile Court. *United States* v. *Dickerson, Jr.* (1958, 168 F. Supp. 899).

§ 11–1555. Jurisdiction of paternity proceedings.

The Juvenile Court has original and exclusive jurisdiction of proceedings to determine paternity of any child alleged to have been born out of wedlock and to provide for his support in the manner provided by subchapter II of chapter 23 of Title 16. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–951 (Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240).

Section is derived from the first sentence of section 11–951 of D.C. Code, 1961 ed. For remainder of section 11–951, see tables.

Changes are made in phraseology.

§ 11–1556. Concurrent jurisdiction of desertion and nonsupport cases.

The Juvenile Court has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of all cases arising under sections 22–903 to 22–905, relating to desertion or nonsupport. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–907, 11–961 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 308, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, §§ 1, 13, 64 Stat. 1240, 1242).

Section consolidates the second sentence of subsec. 2 of section 11–907, and the first part of subsec. (a) of section 11–961, of D.C. Code, 1961 ed., both of which conferred jurisdiction on the Juvenile Court, concurrently with the District Court, of the desertion and nonsupport cases referred to. The same provisions are carried into section 11–523 herein. For remainder of sections 11–907 and 11–961, see tables.

The reference in section 11–907 of D.C. Code, 1961 ed., to sections "22–902 to 22–905" is changed to sections "22–903 to 22–905", on recommendation of the Judge of the Juvenile Court, and to conform with the legislative intent. See revision note under section 11–523 herein.

Changes are made in phraseology.

§ 11–1557. Construction of chapter with respect to other jurisdiction.

This chapter does not limit the jurisdiction vested in the Juvenile Court:

(1) by section 31–213, with respect to cases arising under sections 31–201 to 31–212 relating to compulsory school attendance and work permits;

(2) by section 36–228, with respect to cases arising under sections 36–201 to 36–227, relating to child labor and work permits; or

(3) by any other provision of law.

(Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–907 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 64 Stat. 1240).

Section is derived from the third (final) sentence of subsec. 2 of section 11–907 of D.C. Code, 1961 ed. For remainder of section 11–907, see tables.

For the purpose of clarification, words describing the subjects to which sections 31–201 to 31–212, and 36–201 to 36–227 (referred to in the text), relate, are inserted.

The provisions of section 11–907 of D.C. Code, 1961 ed., carried into this section, indicating that the jurisdiction of the Juvenile Court in cases arising under sections 31–201 to 31–213 of the Code, relating to compulsory school attendance and work permits, is concurrent with that of the District Court, are omitted. Section 31–213, conferring jurisdiction on the Court in such matters, and act July 2, 1940, ch. 525, 54 Stat. 735, inserting in section 11–907 the saving clause with respect to such jurisdiction, do not provide for concurrent jurisdiction of the District Court.

Words "or vested in the Juvenile Court by any other provision of law" are added at the end to make it clear that any other jurisdiction, that may be conferred on the Juvenile Court by laws not included in this chapter, is not limited by the provisions of this chapter.

Changes are made in phraseology.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–1581. Contempt powers.

The Juvenile Court may punish, as a contempt, a willful violation, neglect, or disobedience of its orders by a fine not exceeding $200 or imprisonment not exceeding six months, or by both. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–933 (Mar. 19, 1906, ch. 960, § 31, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Changes are made in phraseology.

§ 11–1582. Administration of oaths and affirmations.

The judges or acting judges of the Juvenile Court may administer oaths and affirmations. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–904 (Mar. 19, 1906, ch. 960, § 3, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596, Mar. 9, 1962, Pub. L. 87–413, § 3(b), 76 Stat. 22).

Section is derived from that part of section 11–904 of D.C. Code, 1961 ed., which empowered the judge or acting judge of the Juvenile Court to administer oaths and affirmations. For remainder of section 11–904, see tables.

Changes are made in phraseology.

§ 11–1583. Duties of Corporation Counsel.

(a) The Corporation Counsel of the District of Columbia or any of his assistants shall:

(1) upon request, assist the Juvenile Court in hearings arising under section 11–1551;

(2) institute and prosecute proceedings and cases arising under section 11–1555 and subchapter II of chapter 23 of Title 16, relating to the establishment of paternity and provision for support of children born out of wedlock; and

(3) prosecute cases arising under sections 11–1554 and 11–1556 and the sections specified by section 11–1557, in which a person 18 years of age or over is charged with an offense.

(b) As used in this section, "Corporation Counsel" means the attorney for the District of Columbia, by whatever title the attorney may be known, designated by the Board of Commissioners of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this section. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–906, 11–932, 11–951 (Mar. 19, 1906, ch. 960, § 5, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; Mar. 19, 1906, ch. 960, § 31, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240), and on Pres. Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 55–1029, June 6, 1955, as amended Reorg. Ords. Nos. 56–320, Feb. 10, 1956; 56–1776, Aug. 30, 1956; 56–2102, Oct. 18, 1956.

Section consolidates section 11–932 of D.C. Code, 1961 ed., with part of subsec. (b) of section 11–906, and part of the second sentence of section 11–951, of the Code. The same provision, and other provisions, of section 11–951 are also carried into chapter 23 of Title 16. For remainder of sections 11–906 and 11–951, see tables.

For the purpose of clarification, and on recommendation of the Judge of the Juvenile Court, words "arising under section 11–1551" are substituted for words in section 11–932 of D.C. Code, 1961 ed., "to determine delinquency, dependency, or neglect" in subsec. (a)(1) herein.

Also for the purpose of clarification, words "arising under sections 11–1554 and 11–1556 and the sections referred to in section 11–1557" are substituted for words in section 11–932 of D.C. Code, 1961 ed., "within the jurisdiction of the court".

Words "person 18 years of age or over" are substituted in subsec. (a)(3) for "adult" (as used in section 11–932 of D.C. Code, 1961 ed.), and therefore it is not necessary to retain the definition of "adult" which was contained in section 11–906 thereof.

Subsec. (b), which follows language recommended by the Corporation Counsel of the District, is new, and is inserted because of the reorganizational changes effected by Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824. That plan abolished a number of offices and agencies in the District, including the Office of the Corporation Counsel, transferred their function to the Board of Commissioners of the District of Columbia, and authorized the Board to create new offices and agencies and delegate functions thereto. The Board, after temporarily continuing, by Reorganization Order No. 1, July 1, 1952, the offices and agencies so abolished, including the former Office of the Corporation Counsel, established a new Office of the Corporation Counsel, and abolished the former office, by Reorganization Order No. 50, June 26, 1953, as amended, which was repealed and replaced by Reorganization Order No. 55–1029, June 6, 1955, as amended by the later reorganization orders cited in the first paragraph of this note. Reorganization Order No. 55–1029, as so amended, continued the Office of the Corporation Counsel established by Reorganization Order No. 50, as amended. Under those orders, the

Board transferred to that office functions previously transferred to the Board by Presidential Reorganization Plan No. 5, referred to above. Although, technically, the ultimate responsibility to perform the functions transferred to the present Office of the Corporation Counsel is now in the Board of Commissioners, the District of Columbia, since it must, as pointed out in letter of June 25, 1959, receive from the Corporation Counsel, citing the case of Ex parte Garland (1866) 71 U.S. 333, 378, 18 L. Ed. 366, 370, "be represented by one who is legally authorized to perform the functions of an attorney at law, it necessarily follows that representation by any officer or agency is not lawful unless the representative be a member of the Bar of the United States District Court for the District of Columbia and authorized to practice law before the courts of the District of Columbia".

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Evidence

Evidence supported finding that defendant was father of child born out of wedlock. *Stone* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 841).

In illegitimacy case in Juvenile Court of District of Columbia, reception in evidence of child's birth certificate containing statements as to name of father, offered for apparent purpose of impeaching complaining witness' testimony that defendant was father of child was not error where the certificate actually did not impeach complaining witness in view of such witness' explanation as to the making of the certificate. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Documents which purported to show that defendant was free of gonorrhea in February, or specifically on February 28, when the complaining witness said defendant infected her, were properly excluded, since in view of the rapidity of modern methods of treatment it cannot be said that the absence of infection on the later dates established that there was no infection on the earlier date. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

When affidavits are submitted which tend to prove that one or more persons other than appellant may have been the father of the child, they are inadmissible when they do not state when the alleged act occurred. Evidence of intercourse by the mother with men other than appellant would not affect the issue of paternity unless such acts occurred at a time when, in a course of nature, they could have resulted in conception of the child. *Dicks* v. *United States* (D.C. Mun. App. 1950, 72 A. 2d 34).

It was not prejudicial error to allow the prosecution to introduce evidence tending to show that defendant was guilty of the crime of seduction. In such a proceeding it should be expected that the government would have to prove its allegation by evidence of a general nature and these circumstances are admitted for their probative value. The limit and range of such evidence is largely within the discretion of the trial court. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

2. Jurisdiction

Under former sections 11–943 to 11–950, jurisdiction was conferred on the Juvenile Court if the child was born in the District, or was born outside and the mother is a legal resident of the District. *Dicks* v. *United States* (D.C. Mun. App. 1950, 72 A. 2d 34).

Bastardy proceedings are purely statutory and statute is plain and unambiguous on its face. Former sections 11–493 to 11–950 clearly provided for jurisdiction under the circumstances outlined in this case, bestowing jurisdiction on the trial court where the complainant was delivered of her child in the District. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

3. Motion for new trial

In proceeding to establish paternity and to provide for support of illegitimate child, wherein defendant's motion for new trial was based on affidavits that defendant was seen in other places than Brooklyn, New York, on the day of alleged act of intercourse and that defendant had left Washington with his mother on automobile trip on such day, denial of motion was not abuse of discretion under the circumstances. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

4. Motion to set aside judgment

A motion by defendant to set aside judgment and withdraw plea of guilty entered in bastardy proceedings while he was not represented by counsel should have been granted where defendant testified that he had never received summons to appear, and following his arrest at 5:00 o'clock a.m. was confined without food and without communication until he was taken to court around 3:30 o'clock p.m. and that he was not aware of import of his actions. *Stallans* v. *District of Columbia* (D.C. Mun. App. 1957, 130 A. 2d 923).

5. Nature of proceedings

Bastardy proceedings are purely statutory and are quasi-criminal in nature but the proceedings are neither criminal nor punitive in nature and there is no judicial condemnation of the mother or the putative father and the court's interest is the support and care of the child and the action should be considered as basically a civil suit and the standards applicable to a civil trial usually apply. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

6. Offer of settlement

Defendant's offer to pay in order to settle, prefaced by an absolute denial of liability, constituted true offer of compromise and was not admission of liability and hence, offer was inadmissible in illegitimacy proceeding in Juvenile Court of District of Columbia, notwithstanding that offer was made indirectly to complaining witness through medium of witness' brother. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

7. Prejudicial error

In proceeding to establish paternity and to provide for support of illegitimate child, where defendant offered sales slip to show that defendant purchased suit in Washington on date of alleged act of intercourse in Brooklyn, New York, even if ruling that slip was inadmissible for lack of identification was erroneous, the error was not prejudicial inasmuch as other records of the store showing the alleged purchase were subsequently admitted. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

8. Purpose

The object of former sections 11–943 to 11–950 was not to punish the father for fornication but rather to provide support for the child and the moral obligation of the father to support his illegitimate child is thus converted into a legal obligation. There is no legal obstacle against enforcing that obligation against the father in the jurisdiction where he is found, if the statute so provides. *Dicks* v. *United States* (D.C. Mun. App. 1950, 72 A. 2d 34).

9. Review

The Municipal Court of Appeals is bound by rule that where there is substantial evidence to support a finding it has no right to reverse. *Stone* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 841).

Municipal Court of Appeals cannot decide appeals on basis of facts stated in brief unless such facts also appear in records brought up from trial court. *Id.*

It is not the function of the Municipal Court of Appeals, on appeal from Juvenile Court in proceeding involving paternity of an illegitimate child, to reweigh the evidence or test the credibility of witnesses. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Where on appeal in bastardy proceedings, testimony of complaining witness was that she learned of her pregnancy in the latter part of March, 1949 and had missed

her menstrual period which was due March 14, 1949, and it was not disputed that the child was born on November 17, 1949—less than nine months thereafter—such testimony that she was pregnant in the latter part of March was admissible, since the witness was not venturing a medical opinion but was reporting an actuality. Courts may take judicial notice that the period of human gestation is about two hundred eighty days or nine calendar months. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

Where the record does not reveal what the judge told the jury, or what objections were made to the charge, appellate court cannot consider the objection, for it was given no basis on which to rule that the charge was erroneous or otherwise. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

10. Right to counsel

Where defendant probably understood that he was charged with paternity of child born out of wedlock and that his acknowledgment of the charge would result in his being ordered to pay something for support of the child but it was not clear that defendant was informed or understood that such payments would have to be made for 16 years and that he could be sent to jail for a year whenever he defaulted in payment, defendant's guilty plea, entered when he was not represented by counsel, would be set aside and he would be permitted to plead not guilty. *Huffman* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 114).

Where defendant was without counsel only at his arraignment and preliminary hearing, and he pleaded not guilty and was represented by counsel at his trial, he was not deprived of any substantial rights, because the trial court refused to grant a second preliminary hearing because the defendant was not represented by counsel at the original hearing. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

11. Voir dire examination

Where defendant was charged with being father of an illegitimate child, action of the trial court in explaining the history and purpose of this subchapter to the jury on a voir dire examination was proper. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

12. Witnesses

In child support proceeding against putative father in which complaining witness, on direct examination, testified that defendant had made contributions of food and clothing to children within one year preceding institution of proceeding, but on cross-examination, complaining witness denied having made contradictory statements regarding such contributions at preliminary hearing before another judge, defendant's attorney was competent to testify as to what complaining witness had said at preliminary hearing without withdrawing from case. *Ford* v. *District of Columbia* (D.C. Mun. App. 1953, 96 A. 2d 277).

Where sister of the complaining witness was permitted to testify that complaining witness never mentioned going with any other men, it was hearsay, but the value of such testimony from defendant's viewpoint was merely negative in nature. In view of other stronger evidence in the case, its probative value was so slight that it could not have affected the verdict of the jury. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

It was error for the trial court to permit the complaining witness to testify that in February she contracted gonorrhea from the defendant since the witness had said that she had had no relations with any other man during the period involved, and moreover, the record does not show any objection to this testimony. *Id.*

§ 11–1584. Assistance and co-operation of officers, departments, institutions, and others.

Every officer and department of the District of Columbia is required to render all asssistance and co-operation within his or its jurisdictional power which may further the objects of this chapter and subchapter I of chapter 23 of Title 16. Institutions or agencies to which the Juvenile Court sends a child are required to give to the court or to any officer appointed by it such information or reports concerning the child as the court or officer requires. The court may seek the co-operation of societies or organizations having for their object the protection or aid of children. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–931 (Mar. 19, 1906, ch. 960, § 30, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Changes are made in phraseology.

§ 11–1585. Payment of fines, costs, etc., to clerk—Deposit—Accounting.

Fines, penalties, costs, and forfeitures imposed or taxed by the Juvenile Court shall be paid to the clerk of courts, either with or without process, or on process ordered by the court. The clerk of the court shall, on the first secular day of each week, deposit with the Board of Commissioners or its authorized representative the total amount of all fines, penalties, costs, and forfeitures collected by him during the week next preceding the date of the deposit, to be covered into the Treasury to the credit of the District of Columbia. The clerk shall render an itemized statement of each deposit to the Board or its authorized representative. (Dec. 23, 1963, 77 Stat. 501, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–939 (Mar. 19, 1906, ch. 960, § 39, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Reference to the collector of taxes is changed to "Board of Commissioners or its authorized representative", and reference to the auditor of the District of Columbia is changed to "Board or its authorized representative", for the same reasons stated in revision note under section 11–983 herein.

Changes are made in phraseology.

§ 11–1586. Records—Limited inspection—Penalties for unlawful disclosure or use.

(a) The Juvenile Court shall maintain records of all cases brought before the court pursuant to subchapter I of chapter 23 of Title 16. The records shall be withheld from indiscriminate public inspection but shall be open to inspection only by respondents, their parents or guardians and their duly authorized attorneys, and by the institution or agency to which the respondent under 18 years of age may have been committed pursuant to sections 16–2307 and 16–2308.

Pursuant to rule or special order of the court, other interested persons, institutions, and agencies may inspect the records. As used in this subsection, "records" includes:

(1) notices filed with the court by arresting officers pursuant to section 16–2306;

(2) the docket of the court and entries therein;

(3) the petitions, complaints, informations, motions, and other papers filed in a case;

(4) transcripts of testimony taken in a case tried by the Court;

(5) findings, verdicts, judgments, orders and decrees; and

(6) other writings filed in proceedings before the court, other than social records.

(b) The records or parts thereof made by officers of the court pursuant to sections 11–1525 and 16–2302, referred to in subsection (a) of this section as social records, shall be withheld from indiscriminate public inspection, except that they shall be made available by rule or special order of court to such persons, governmental and private agencies, and institutions as have a legitimate interest in the protection, welfare, treatment, and rehabilitation of the child under 18 years of age, and to any court before which the child may appear. The court may also provide by rule or a judge may provide by special order that any such person or agency may make or receive copies of the records or parts thereof. Persons, agencies, or institutions receiving records or information pursuant to this subsection may not publish or use them for any purpose other than that for which they were received.

(c) Whoever, except for the purposes permitted and in the manner provided by subsections (a) and (b) of this section, discloses, receives, or makes use of, or authorizes, knowingly permits, participates in, or acquiesces in, the use of information concerning a juvenile before the court, directly or indirectly derived from the records, papers, files, or communications of the court, or acquired in the course of official duties, upon conviction thereof, shall be guilty of a misdemeanor, and shall be fined not more than $100 or imprisoned not more than ninety days, or both.

(d) Prosecutions pursuant to subsection (c) of this section shall be brought in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants. As used in this subsection, "Corporation Counsel" has the same meaning as that prescribed by section 11–1583(b).

(e) Except on order of the court, the records or proceedings in a case arising under subchapter II of chapter 23 of Title 16 may not be open to inspection by anyone other than the defendant or counsel of record. The court, upon proper showing, may authorize the clerk to furnish certified copies of the records or portions thereof to the defendant, the mother, or custodian of the child, a party in interest, or their duly authorized attorneys. The clerk may furnish certified copies of the records or portions thereof, upon request, to the United States attorney for the District of Columbia for use as evidence in nonsuppport proceedings as provided by sections 11–523, 11–1556, 16–2355, and 16–2381 and to the Director of Public Health as provided by section 16–2354(a). (Dec. 23, 1963, 77 Stat. 501, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–929, 11–965 (Mar. 19, 1906, ch. 960, § 28, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Jan. 11, 1951, ch. 1225, § 17, 64 Stat. 1243; June 12, 1952, ch. 417, § 3, 66 Stat. 134; Mar. 9, 1962, Pub. L. 87–413, § 3(f), 76 Stat. 22; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–929 and 11–965 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (d), the second sentence is added. See subsec. (b) of section 11–1583 herein, and revision note under section 11–1583.

In subsec. (e), which is from section 11–965 of D.C. Code, 1961 ed., "Director of Public Health" is substituted for "Bureau of Vital Statistics". See section 16–2341 and revision note thereunder.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. District Court entitled to records

On waiver of jurisdiction to district court by juvenile court, district court is entitled to juvenile court records. *M. A. Kent, Jr. v. C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

§ 11–1587. Audit of accounts.

The Board of Commissioners of the District of Columbia, or its authorized representative, shall audit the accounts of the clerk of the Juvenile Court at the end of every quarter, and in the performance of this duty shall have free access to all books, papers, and records of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88–241, § 1).

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–940 (Mar. 19, 1906, ch. 960, § 40, as added June 1, 1938, ch. 309, 52 Stat. 596 (605)).

The reference "Board of Commissioners of the District of Columbia, or its authorized representative," is substituted for "auditor of the District of Columbia", and words 'and to make prompt report thereof in writing to the commissioners of the District of Columbia" are omitted as no longer necessary to retain in view of the said substitution. See revision note under section 11–983 herein.

Changes are made in phraseology.

§ 11–1588. Court quarters.

The Board of Commissioners of the District of Columbia shall provide suitable quarters for the hearing of cases by the Juvenile Court, and for the use of the judges and the probation department and employees of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 58–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–928 (Mar. 19, 1906, ch. 960, § 27, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Mar. 9, 1962, Pub. L. 87–413, § 3(b), 76 Stat. 22).

Changes are made in phraseology.

§ 11–1589. Quarterly reports.

The chief judge or the acting chief judge of the Juvenile Court shall submit to the Attorney General of the United States and to the President of the Board of Commissioners of the District of Columbia a detailed quarterly report of the work of the court within thirty days of the end of the quarter, to include the number of juvenile and adult cases heard, the number of juvenile and adult cases calendered, the number of juvenile and adult complaints filed, the number of juvenile cases closed without court hearing, moneys collected for fines and support of legitimate and illegitimate family members, and such other information as may reflect the court's operation and volume of work. A copy of the report shall be kept in the office of the clerk of the court and be subject to public inspection during the regular business hours of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–942–1 (Mar. 1906, ch. 960, § 45, as added Mar. 9, 1962, Pub. L. 87–413, § 5, 76 Stat. 22).

Minor changes are made in phraseology.

Chapter 17.—MISCELLANEOUS PROVISIONS RELATING TO COURTS AND JUDGES

Sec.

11–1701. Retirement, resignation, or non-reappointment of judges—Recall.

§ 11–1701. Retirement, resignation, or non-reappointment of judges—Recall.

(a)(1) Any judge of the District of Columbia Court of General Sessions, any judge of the District of Columbia Court of Appeals (as established by this Act), or any judge of the Juvenile Court of the District of Columbia who is subject to this subsection shall hereafter be eligible to retire after having served as a judge of such court or courts for a period or periods aggregating ten years or more, whether continuously or not. Any judge who so retires shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge: *Provided,* That if any such judge shall retire after twenty or more years of service, other than for permanent disability, his retirement salary shall not commence until he shall have reached the age of fifty: *Provided further, however,* That if any such judge shall retire after less than twenty years of service, other than for permanent disability, his retirement salary shall not commence until he shall have reached the age of sixty-two, except that such judge may elect to receive a reduced retirement salary beginning at the age of fifty-five or at the date of his retirement if subsequent to that age, the reduction in retirement salary in such case to be one-half of 1 per centum for each month or fraction of a month the judge is under the age of sixty-two at the time of commencement of his reduced retirement salary. In no event shall the sum received by any judge as retirement salary under this subsection be in excess of 80 per centum of the salary of such judge at the date of such retirement. In computing the years of service under this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, the District of Columbia Court of Appeals, or the District of Columbia Court of General Sessions, as heretofore constituted, shall be included whether or not such service be continuous. The terms "retire" and "retirement" as used in this section shall mean retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent.

(2) Any judge subject to this subsection may hereafter retire after having served five years or more and having become permanently disabled from performing his duties. Such judge may retire for disability by furnishing to the Commissioners of the District of Columbia a certificate of disability signed by a duly licensed physician and approved by the Surgeon General of the Public Health Service. A judge who retires for disability under this subsection shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge, except that in no event shall the sum received by any judge as retirement salary hereunder be in excess of 80 per centum of the salary of such judge at the date of such retirement for disability.

(3) Any judge receiving retirement salary under the provisions of this subsection or under the provisions of this section as it existed immediately prior to its amendment by the District of Columbia Judges Retirement Act of 1964 [this section] may be called upon by the chief judge of the District of Columbia Court of General Sessions, or the chief judge of the District of Columbia Court of Appeals, or the chief judge of the Juvenile Court of the District of Columbia, to perform such judicial duties as may be requested of him in any of such courts, but in any event no such retired judge shall be required to render such service for a total of more than ninety days in any calendar year after such retirement. Any judge called upon pursuant to this subsection to perform judicial duties who, for any reason except illness or disability, fails to perform such duties so requested shall forfeit all right to retired pay under this section for the one-year period which begins on the first day on which he so fails to perform such duties. In case of illness or disability precluding the rendering of such service such judge shall be fully relieved of any such duty during such illness or disability.

(4) From and after the first day of the first pay period which begins on or after the effective date of the District of Columbia Judges Retirement Act of 1964, [this section] there shall be deducted and withheld from the basic salary of each judge subject to the provisions of this subsection an amount equal to 3½ per centum of such judge's basic salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Commissioners of the District of Columbia, be deposited in the District of Columbia Judicial Retirement and Survivors Annuity Fund established pursuant to paragraph (1) of subsection (d) of this section. Each judge subject to the provisions of this subsection shall be deemed to consent and agree to such deductions from basic salary and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which he shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the individual's salary.

(5) Each judge subject to the provisions of this subsection shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum threafter, compounded on December 31 of each year, in the fund, a sum equal to 3½ per centum of his salary received for judicial

service performed by him as a judge of any court referred to in paragraph (1) of subsection (a) prior to the date he became subject to the provisions of this subsection. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioners of the District of Columbia. Notwithstanding the failure of any such judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay of such judge shall be reduced by 10 per centum of such deposit remaining unpaid, unless such judge shall elect to eliminate the service involved for purposes of retirement salary computation.

(6) If any judge who is subject to the provisions of this subsection resigns from his judicial office otherwise than under the provisions of this subsection, all amounts deducted from his salary under paragraph (4) and deposited by him under paragraph (5), together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. In any case in which any such judge, who has not elected to bring himself within the purview of subsection (b) of this section, dies while in regular active service, all amounts so deducted from his salary and deposited by him under this subsection remaining in the fund at the time of his death, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of his death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving him in the order of precedence provided for in paragraph (7) of subsection (b). Such payments shall be a bar to recovery by any other person.

(7) All judges of the District of Columbia Court of General Sessions, the District of Columbia Court of Appeals, and the Juvenile Court of the District of Columbia shall be subject to the provisions of this subsection, except that any such judge who is serving as such on the effective date of the District of Columbia Judges Retirement Act of 1964 [this section] shall be subject to this subsection (except paragraph (3) of this subsection) only if, within one year following such date, such judge files with the Commissioners of the District of Columbia a written election to come within the purview of this subsection. Such election once made shall be irrevocable. If no election is made within such one-year period, such judge shall have his right to retirement salary and the amount thereof determined as though the District of Columbia Judges Retirement Act of 1964 [this section] had not been enacted.

(b) (1) Any judge of any of the courts referred to in paragraph (1) of subsection (a), whether or not subject to the provisions of subsection (a) of this section, or any judge retired under the provisions of this section as it existed prior to the enactment of the District of Columbia Judges Retirement Act of 1964, [this section] may, by written election filed with the Commissioners of the District of Columbia within six months after the date on which he takes office, or is reappointed to office (or within six months after the effective date of the District of Columbia Judges Retirement Act of 1964), [this section] bring himself within the purview of this subsection.

(2) There shall be deducted and withheld from the salary of each judge electing to bring himself within the purview of this subsection a sum equal to 3 per centum of such judge's salary, including salary paid after retirement under the provisions of this section. The amounts so deducted and withheld from the salary of each such judge shall, in accordance with such procedure as may be prescribed by the Commissioners of the District of Columbia, be deposited in the fund. Every judge who elects to bring himself within the purview of this subsection shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this subsection.

(3) Each judge who has elected to bring himself within the purview of this subsection shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the credit of the fund, a sum equal to 3 per centum of his salary received for service as a judge of any of the courts referred to in paragraph (1) of subsection (a), including salary received after retirement, and of his basic salary, pay, or compensation for services as a Senator, Representative, Delegate, or Resident Commissioner in Congress and for any other civilian service within the purview of section 3 of the Civil Service Retirement Act (5 U.S.C. 2253). Such interest shall not be required for any period during which the judge was separated from all such service and was not receiving retirement salary under this section. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioners. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 per centum of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under paragraph (13) of this subsection: *Provided,* That no deposit shall be required from a judge for any service rendered prior to August 1, 1920, or for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(4) If any judge who has elected to bring himself within the purview of this subsection resigns from office otherwise than under the provisions of this section, the amount credited to his individual account under this subsection, together with interest at 4 per centum per annum to December 31, 1947,

and 3 per centum per annum, thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him.

(5) In case any judge who has elected to bring himself within the purview of this subsection shall die while in regular active service or after having retired from such service under the provisions of this section, after having rendered at least five years of civilian service computed as prescribed in paragraph (13) of this subsection for the last five years of which the salary deductions provided for by paragraph (2) of this subsection or the deposits required by paragraph (3) of this subsection have actually been made—

(A) If such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of fifty years, whichever is later, in an amount computed as provided in paragraph (12) of this subsection; or

(B) if such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in paragraph (12) of this subsection and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed $900 per year divided by the number of such children or $360 per year, whichever is lesser; or

(C) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (A) of this subsection had she survived, but not to exceed $480 per year.

The annuity payable to a widow under this subsection shall be terminable upon her death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (i) his attaining the age of eighteen years, (ii) his marriage, or (iii) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability after attaining the age of eighteen years. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her the annuity of such child or children shall be recomputed and paid as provided in subparagraph (C) of this paragraph. In any case in which the annuity of a dependent child, under this subsection, is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

(6) As used in this subsection—

(A) The term "widow" means a surviving wife of an individual who either (i) shall have been married to such individual for at least two years immediately preceding his death or (ii) is the mother of issue by such marriage, and who has not remarried.

(B) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support.

Questions of dependency and disability arising under this subsection shall be determined by the Commissioners of the District of Columbia. The Commissioners may order or direct at any time such medical or other examinations as they shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this subsection, and may suspend or deny any such annuity for failure to submit to any examination.

(7) In any case in which (A) a judge who has elected to bring himself within the purview of this subsection shall die (i) while in regular active service after having rendered five years of civilian service computed as prescribed in paragraph (13) of this subsection, or while receiving retirement salary under this section, but without a survivor or survivors entitled or who, upon attaining the age of fifty, will become entitled, to annuity benefits provided by paragraph (5) of this subsection, or (ii) while in regular active service but before having rendered five years of such civilian service or (B) the right of all persons entitled to an annuity under paragraph (5) of this subsection based on the service of such judge shall terminate before a valid claim therefor shall have been established, the total amount credited to an individual account of such judge under this section, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum, thereafter, compounded on December 31 of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated by a writing received by the Commissioners of the District of Columbia prior to his death;

Second, if there be no such beneficiary, to the widow of such judge;

Third, if none of the above, to the child or children of such judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of such judge as may be determined by the Commissioners to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the widow or child of a judge for the purposes of this subsection shall be made

by the Commissioners without regard to the definition of these terms stated in paragraph (6) of this subsection.

(8) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of such judge under this section, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (7) of this subsection.

(9) Any accrued annuity remaining unpaid upon the termination (other than by reason of death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid, upon establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor or administrator of the estate of such person;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the Commissioners to be legally entitled thereto, and such payments shall be a bar to recovery by any other individual.

(10) Where any payment under this subsection is to be made to a minor or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the jurisdiction wherein the claimant resides, the Commissioners shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(11) Annuities granted under the terms of this subsection shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or or other period for which the annuity shall have accrued.

(12) The annuity of the widow of a judge who has elected to bring himself within the purview of this subsection shall be an amount equal to the sum of (A) 1¼ per centum of the average annual salary received by such judge for judicial service and any other prior allowable service during the last five years of such service prior to his death, or retirement from office under this section, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding fifteen, of prior allowable service performed as an employee described in section 1(c) of the Civil Service Retirement Act [5 U.S.C. 2251(c)] and (B) three-fourths of 1 per centum of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½ per centum of such average annual salary and shall be further reduced in accordance with paragraph (3) of this subsection, if applicable.

(13) Subject to the provisions of paragraph (3) of this subsection, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a judge of one of the courts referred to in paragraph (1) of subsection (a) of this section (whether in regular active service or retired from such service under this section), his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding five years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 3 of the Civil Service Retirement Act. [5 U.S.C. 2253]

(14) Nothing contained in this subsection shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this subsection and any annuity to which she would otherwise be entitled under any other law without regard to this subsection, but in computing such other annuity, service used in the computation of her annuity under this subsection shall not be credited.

(c) Nothing contained in this section shall be construed to prevent a judge eligible therefor from simultaneously receiving his retirement salary under this section and any annuity to which he would otherwise be entitled under any other law without regard to this section, but in computing such annuity, service used in the computation of retirement salary under this section shall not be credited: *Provided, however,* That nothing contained in this section shall be construed to prevent a judge of any court referred to in paragraph (1) of subsection (a) who is serving on the effective date of the District of Columbia Judges Retirement Act of 1964, [this section] and who does not elect under paragraph (7) of subsection (a) to come within the purview of such subsection, from electing to waive the provisions of this section regarding retirement salary and crediting service hereunder in computing any annuity to which he would otherwise be entitled under any other law without regard to this section; nor shall anything contained in this section (except paragraph (7) of subsection (a) of this section) or in any other law be construed to require any such judge eligible therefor to elect to waive either the provisions of this section regarding retirement salary and annuities or the provisions of any other law re-

lating to retirement salary or annuities prior to the date of his retirement.

(d)(1) There is hereby established in the Treasury of the United States a fund to be known as the District of Columbia Judicial Retirement and Survivors Annuity Fund', and such fund is hereby appropriated for the payment of retirement salaries, annuities, refunds, and allowances as provided in this section. If, at any time, the balance in such fund is not sufficient to pay current obligations arising pursuant to the provisions of this section, there is authorized to be appropriated to such fund, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such amounts as may be necessary to pay such current obligations. The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to such fund, and shall make actuarial valuations of such fund at intervals of five years, or more after if deemed necessary by the Secretary.

(2) The Secretary of the Treasury shall invest, from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, any portions of such fund as in his judgment may not be immediately required for payments from the fund, and the income derived from such investments shall constitute a part of the fund.

(3) All amounts deposited by, or deducted and withheld from the salary of, any judge as provided under this section for credit to the fund shall, under such regulations as may be prescribed by the Commissioners of the District of Columbia, be credited to an individual account of such judge.

(4) None of the moneys mentioned in this section shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process.

(5) Whenever used in this section, the term 'fund' shall mean the District of Columbia Judicial Retirement and Survivors Annuity Fund established under paragraph (1) of this subsection. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88–241, § 3; Oct. 13, 1964, 78 Stat. 1055, Pub. L. 88–644, § 1.)

REFERENCE IN TEXT

"As established by this Act" probably has reference to the Act of Apr. 1, 1942, 56 Stat. 190, ch. 207, which consolidated the former Police Court and Municipal Court and also established "The Municipal Court of Appeals for the District of Columbia." These courts are now known as the District of Columbia Court of General Sessions and the District of Columbia Court of Appeals, respectively.

AMENDMENTS

1964—Section 1 of act Oct. 13, 1964, amended the section to read as above set out. Prior to this amendment the section read as follows: (a) A judge of the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia who, after having served as a judge of the court for a period or periods aggregating twenty years or more, whether continuously or not, retires, resigns, or fails of reappointment upon the expiration of his term of office, shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of his salary at the date of his retirement, resignation, or failure of reappointment upon the expiration of his term of office as the total of his aggregate years of service bears to the period of thirty years, to be paid in the same manner as his salary. The sum so received by him may not exceed his salary at the date his service ceases.

(b) In computing the years of service pursuant to this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, as constituted prior to July 1, 1942, or the Municipal Court of Appeals for the District of Columbia, or the Municipal Court for the District of Columbia, as constituted prior to January 1, 1963, shall be included whether or not the service is continuous.

(c) A judge receiving retirement salary pursuant to this section may be called upon by the chief judge of the District of Columbia Court of Appeals or the chief judge of the District of Columbia Court of General Sessions to perform such judicial duties as may be requested of him in either of those courts, or in the Juvenile Court of the District of Columbia; but a retired judge shall not be required to render service for more than ninety days in a calendar year after retirement. In case of illness or disability precluding the rendering of service the retired judge shall be fully relieved of service during his illness or disability.

EFFECTIVE DATE OF ACT OF OCTOBER 13, 1964

Section 3 of act of Oct. 13, 1964, provided: "This Act shall be effective on and after the first day of the first month following the date of its enactment." [October 13, 1964].

POPULAR NAME

Section 2 of the act of Oct. 13, 1964, provided: "This Act [this section] may be cited as the 'District of Columbia Judges Retirement Act of 1964' ".

REVISION NOTES APPLICABLE PRIOR TO ACT OCT. 13, 1964

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–771a, 41–776 (Apr. 1, 1942, ch. 207, § 11, 56 Stat. 197; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provision in section 11–776 of D.C. Code, 1961 ed., defining "retire" and "retirement" as meaning and including "retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent" is omitted as unnecessary and covered by the other provisions as reworded in this revised section.

In subsec. (b) of this revised section, words "as constituted prior to July 1, 1942" are substituted for "as heretofore constituted". Section 11–776 of D.C. Code, 1961 ed., from which this section is derived, was enacted on Apr. 1, 1942 (ch. 207, § 11, 56 Stat. 197), and under section 14 of that act, section 11–776 became effective July 1, 1942 (3 months after Apr. 1, 1942).

Also in subsec. (b), words "or the Municipal Court of Appeals for the District of Columbia, or the Municipal Court for the District of Columbia, as constituted prior to January 1, 1963" are inserted for the purpose of completeness. Jan. 1, 1963, was the effective date of the act of Oct. 23, 1962, which changed the names of those two courts to District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively.

Changes are made in phraseology and arrangement.

Chapter 19.—CORONER

Sec.

11–1901. Definition.
11–1902. Inquests—exceptions—jury.
11–1903. Witnesses—attachment—contempt.
11–1904. Testimony reduced to writing in certain cases—recognizances—returns.
11–1905. Monthly reports of inquests—delivery of property.
11–1906. Fees of witnesses and jurors—allowances.

§ 11–1901. Definition.

As used in this chapter, "coroner" means the Board of Commissioners of the District of Columbia or the officer or agency designated by the Board to perform the functions prescribed by this chapter. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88–241, § 1.)

REVISION NOTES

Section is new, and is inserted because of the reorganizational changes effected by Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824. Under that Plan, a number of agencies and offices, including the Office of the Coroner, were abolished and their functions transferred to the Board of Commissioners, and among other things, the Board was authorized to perform the transferred functions or create new offices and agencies and delegate functions to them. The Board's Reorganization Order No. 1, C.O. 302, 853/11, July 1, 1952, temporarily redelegated the transferred functions to the agencies and offices from which they had been transferred by Presidential Reorganization Plan No. 5. The Board's Reorganization Order No. 51, G.F. No. 6–030, June 29, 1953, effective for the most part on Aug. 15, 1953, again abolished the Office of the Coroner, and created another office with the same designation, under the direction and control of a Commissioner. Among other things, that Order provides that the office so created "shall perform such functions as are now or as may be assigned by provisions of the District of Columbia Code", and, except for the laboratory functions performed by the former office (which were transferred to the Department of Public Health), it transferred to the new office all functions and positions, including all duties, powers, and authorities, of officers and employees of the former office.

However, under Presidential Reorganization Plan No. 5, it would seem that the ultimate responsibility for the performance of the functions delegated to the present coroner by Reorganization Order No. 51 is in the Board of Commissioners, and that the Board is empowered to change the present organization at any time, and, if it so desires, to change the designation of "coroner". Therefore, the purpose of this section is to recognize the ultimate responsibility of the Board to perform the functions and to provide for such a change, should it occur.

§ 11–1902. Inquests—Exceptions—Jury.

(a) Except as provided by subsection (b) of this section, the coroner shall hold an inquest over the body of each person found dead in the District when the manner and cause of death is not already known as accidental or in the course of nature.

(b) The coroner may not summon or hold a jury of inquest over the body of a deceased person where it is known that the deceased came to his death by suicide, accident, mischance, or natural causes; except that where it is not known that the deceased came to his death by suicide the coroner may summon a jury.

(c) A coroner's jury shall consist of six persons. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1203, 11–1204, 11–1206 (Mar. 3, 1901, ch. 854, §§ 192, 193, 195, 31 Stat. 1221; Mar. 2, 1911, ch. 192, 36 Stat. 192; June 26, 1912, ch. 182, § 1, 37 Stat. 147).

Section consolidates part of section 11–1203 of D.C. Code, 1961 ed., with sections 11–1204 and 11–1206 thereof. For remainder of section 11–1203, see section 11–1905 herein.

Changes are made in phraseology.

CROSS REFERENCES

Countersigning permit to cremate or otherwise destroy human body, see § 27–125.

Duties of coroner in cases of negligent homicide by operation of motor vehicles, see § 40–606.

Permit to disinter human bodies, see § 27–128.

§ 11–1903. Witnesses—Attachment—Contempt.

The coroner may summon witnesses from any part of the District to appear before him for the purposes of giving evidence, and may compel their attendance by attachment. He may punish for disobedience of a lawful order, or for a contempt committed in his presence, by a fine of not more than $50 or imprisonment of not more than 30 days. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1205 (Mar. 3, 1901, ch. 854, § 194, 31 Stat. 1221; Feb. 17, 1909, ch. 134, 35 Stat. 623).

Section is derived from the first sentence of section 11–1205 of D.C. Code, 1961, ed., which provided as follows: "Witnesses may be summoned and compelled by the coroner to attend before him and give evidence, and shall be liable in like maner as if the summons had been issued by the municipal court". The municipal court referred to in the quoted words was the municipal court prior to its merger in 1942 with the police court to form the second Municipal Court, the name of which has since been changed, by act Oct. 23, 1962, Pub. L. 87–873, 76 Stat. 1171, to the District of Columbia Court of General Sessions. Section 11–740 empowered the former municipal court to compel the attendance of witnesses from any part of the District by attachment and to punish them for disobedience, and for disorder or contempt committed in its presence, by fine not exceeding ten dollars or imprisonment not exceeding 10 days. These maximum punishments can be traced back to the act of May 17, 1848, ch. 42, § 14, 9 Stat. 229, empowering the justices of the peace to compel the attendance of witnesses by attachment and to punish them for refusing obedience to a summons. The provisions were carried into the Revised Statutes of the District of Columbia as section 1005. When they were later carried into the Code of 1901 (Mar. 3, 1901, ch. 854, § 25, 31 Stat. 1193; D.C. Code, 1961 ed., § 11–740), the maximum punishments remained the same, but the other provisions were expanded to read as stated above, except that they referred to justices of the peace rather than the municipal court. The justice of the peace courts became the municipal court under the act of Feb. 17, 1909, ch. 134, 35 Stat. 623.

Section 11–756(c) of D.C. Code, 1961 ed., which related to the second Municipal Court, and, since the enactment of the above-mentioned act of Oct. 23, 1962, to the District of Columbia Court of General Sessions, contained provisions substantially similar to those of section 11–740 thereof, except that the maximum punishments were $50 fine or 30-day imprisonment, and presumably these are the maximum punishments to which a party would now be liable for refusal to obey a summons of the coroner or other contempt before him. Therefor, the provisions of section 11–1205 of D.C. Code, 1961, ed., as herein revised, conform with the provisions of section 11–756(c) thereof. The latter provisions are carried into section 11–981 of this revised part.

For remainder of section 11–1205 of D.C. Code, 1961 ed., see section 11–1904 herein.

§ 11–1904. Testimony reduced to writing in certain cases—Recognizances—Returns.

Upon an inquisition taken before the coroner, where a person is charged with having unlawfully caused the death of the person on whom the inquest is held, the coroner shall:

(1) reduce the testimony of the witnesses to writing; and

(2) if the jury find that murder or manslaughter has been committed on the deceased, require such witnesses as he deems proper to give a recognizance to appear and testify in the United States District Court for the District of Columbia; and

(3) return to the United States District Court the inquisition and testimony and recognizance taken by him.

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1205 (Mar. 3, 1901, ch. 854, § 194, 31 Stat. 1221; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is derived from second sentence of section 11–1205 of D.C. Code, 1961 ed. For remainder of section 11–1205, see section 11–1903 herein.

Changes are made in phraseology and arrangement.

§ 11–1905. Monthly reports of inquests—Delivery of property.

The coroner shall:

(1) make a monthly report to the Board of Commissioners of the District of all inquests held by him during the immediately preceding month, with a description as far as may be of the age, sex, color, and nationality of deceased persons and the causes of their death, and with particulars as may be necessary to their identification; and

(2) as soon as possible after holding an inquest, deliver to the property clerk of the Metropolitan Police Department all moneys and other property and effects found upon the person of anyone on whom he holds an inquest.

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1203 (Mar. 3, 1901, ch. 854, § 192, 31 Stat. 1221).

Section is derived from part of section 11–1203 of D.C. Code, 1961 ed. For remainder of section 11–1203, see section 11–1902 herein.

Changes are made in phraseology.

§ 11–1906. Fees of witnesses and jurors—Allowances.

Witnesses and jurors lawfully summoned in an inquest shall receive the fees and travel and subsistence allowances as may be fixed, with respect to witnesses, by chapter 119 of Title 28, United States Code, and, with respect to jurors, by section 1871 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1515 (Mar. 3, 1901, ch. 854, § 195, 31 Stat. 1221.)

Section 11–1515 of D.C. Code, 1961 ed., provided that jurors and witnesses lawfully summoned in any inquest should be paid the same fees and compensation allowed to jurors and witnesses attending the District Court. The provisions, as herein revised, refer to chapter 119 and section 1871 of Title 28, United States Code, which respectively fix the fees and allowances of witnesses and jurors attending the District Court.

Changes are made in phraseology.

Chapter 21.—ATTORNEYS

Sec.
11–2101. Admission to bar—Regulations—Oath.
11–2102. Censure, suspension, or disbarment by District Court for cause.
11–2103. Disbarment by District Court upon conviction of crime.
11–2104. Censure, suspension, or disbarment by other courts.
11–2105. Procedure for censure, suspension, or disbarment.

§ 11–2101. Admission to bar—Regulations—Oath.

The United States District Court for the District of Columbia may make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion. Every person so admitted, before he is permitted to practice therein, shall take and subscribe the following oath:

"I, ————, do solemnly swear (or affirm) that I well demean myself as a member of the bar of this court uprightly and according to law; and that I will support the Constitution of the United States."

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1301 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 218, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Bar examination papers 1
Committee on admissions and grievances 2
Common law 3
Composition of court 3.50
Duty of court 4
Funds 5
Historical 6
Jurisdiction 7
Power of court 8
Rules of admission 9

1. Bar examination papers

Bar examination papers are not part of records of court but belong exclusively to Committee on Admissions and Grievances, which may destroy memoranda after lapse of time subject only to appeal to judges' discretion. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

2. Committee on admissions and grievances

In exercising right under this section and inherent right to promulgate rules with respect to admissions of attorneys, District Court had right to call to its assistance a committee of lawyers on admissions and grievances, and to compensate members of such committee for their services. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

3. Common law

Summary proceeding provided by this section is "at least as broad as the rule of the common law." *Diggs* v. *Thurston* (39 App. D.C. 267).

3.50. Composition of court

There should be a general term of the United States District Court for the District of Columbia composed of three justices in proceeding for suspension or explusion of member of its bar for professional misconduct. *H. D. Levine* v. *Committee on Admissions etc.* (1964, 328 F. 2d 519, 117 U.S. App. D.C. 218).

4. Duty of court

Court has duty to exercise and regulate admission of applicants to the bar by sound and just judicial discretion. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

5. Funds

A fund controlled by Committee on Admissions and Grievances was rightfully accumulated to make effective the rules promulgated by District Court, and such fund did not belong to United States but to the court and was to be administered as outlined by court. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

Fund resulting from fees paid by applicants for admission to bar, to be distributed by Committee on Admissions and Grievances as it should decide, is not a "tax." *Id.*

6. Historical

An order by the Criminal Court of the District of Columbia, made in 1867, disbarring an attorney from practice in that court, did not remove the attorney from the bar of the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), the criminal court at that time being an

independent court. The act of June 21, 1870 (16 Stat. 160, ch. 141), making the criminal court a part of the Supreme Court did not affect that order. *Bradley* v. *Fisher* (1871, 80 U.S. 335, 13 Wall. 335, 20 L. Ed. 646).

7. Jurisdiction

District Court had no jurisdiction of action under informer's statutes, 31 U.S.C. §§ 231, 232, against Committee on Admissions and Grievances, based on their alleged misconduct in distributing among themselves fees collected from applicants for admission to bar, and in destroying bar examination papers and excluding Negroes from membership on the committee. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

8. Power of court

Within very wide limits, standards of fitness for membership in the bar of the District Court of the United States for the District of Columbia are for the District Court itself to establish and maintain. *Carver* v. *Clephane* (1943, 137 F. 2d 685, 78 U.S. App. D.C. 91).

To admit applicants to practice law is judicial, not legislative, and vested in courts only. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

9. Rules for admission

Pursuant to provisions of the District of Columbia Code, the United States District Court for the District of Columbia has the power and authority to make such rules as it deems proper respecting admission of persons to its bar, and it may establish and maintain its standards of fitness for membership within very wide limits. *Lark* v. *West Chairman etc.* (1960, 182 F. Supp. 794).

§ 11–2102. Censure, suspension, or disbarment by District Court for cause.

The United States District Court for the District of Columbia may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with his application or admission is sufficient cause for the revocation by the court of his admission. (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1302 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 219, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Composition of court .50
Liability of justices 1
Mandamus 2
Misconduct 3
Representing conflicting interests 4

.50. Composition of court

There should be a general term of the United States District Court for the District of Columbia composed of three justices in proceeding for suspension or expulsion of member of its bar for professional misconduct. *H. D. Levine* v. *Committee on Admissions etc.* (1964, 328 F. 2d 519, 117 U.S. App. D.C. 218).

1. Liability of justices

Chief Justice and Associate Justice when affixing their signature to an order for disbarment act within scope of their official authority and within jurisdiction of the court, and they are not liable for damages therefrom. *Fletcher* v. *Wheat* (1939, 100 F. 2d 432, 69 App. D.C. 259, certiorari denied 59 S. Ct. 794, 307 U.S. 621, 83 L. Ed. 1500).

2. Mandamus

The petition for mandamus is the proper remedy to test the question of the right of the District Court without notice to suspend an attorney from practice during the period prior to the hearing on a motion for disbarment. *Laughlin* v. *Wheat* (1938, 95 F. 2d 101, 68 App. D.C. 190).

3. Misconduct

Court may order attorney to pay to client money collected for the latter, and retained or paid out without lawful authority, and this authority is not affected by the common-law action available to the client. *Diggs* v. *Thurston* (39 App. D.C. 267).

When attorney entered in transaction with clients with no deliberate intention of fraudulently profiting at their expense, such misconduct warranted suspension but not disbarment. *Costigan* v. *Adkins* (1927, 18 F. 2d 803, 57 App. D.C. 153, certiorari denied 47 S. Ct. 769, 274 U.S. 760, 71 L. Ed. 1338).

On the evidence defendant's failure to disclose loss of money to client held to be unprofessional conduct, which could be adequately punished by his suspension rather than disbarment. *Id.*

Conduct by an attorney in his professional capacity prejudicial to the administration of justice would necessarily constitute professional misconduct in preparation of pleadings and affidavit. *Curtis* v. *Whiteford* (1930, 41 F. 2d 302, 59 App. D.C. 330).

Order disbarring defendant affirmed on evidence that he filed a false affidavit of merit in suit to recover fees for legal services, stating that he had received no compensation, whereas, in fact he had received two separate payments on account. *Id.*

An attorney is properly disbarred who deceives the court by false statements and misappropriates client's money. *Thomas* v. *Ogilby* (1931, 44 F. 2d 890, 59 App. D.C. 382).

Evidence establishing professional misconduct of attorney and character of the misconduct justified order censuring attorney and suspending him from practice of law for six months. *Halpern* v. *Committee on Admissions and Grievances of the District Court* (1944, 139 F. 2d 361, 78 U.S. App. D.C. 220).

4. Representing conflicting interests

In negotiating the sale, the interests of the prospective seller and buyer were adverse, but once the terms of sale were agreed upon, the parties were jointly interested in having steps taken to complete the sale promptly and we see no reason why the purchaser could not agree to pay the attorney for his services in accomplishing the results desired. *Kreis* v. *Block* (D.C. Mun. App. 1950, 75 A. 2d 523).

§ 11–2103. Disbarment by District Court upon conviction of crime.

When a member of the bar of the United States District Court for the District of Columbia is convicted of an offense involving moral turpitude, and a duly certified copy of the final judgment of the conviction is presented to the court, the name of the member so convicted may thereupon, by order of the court, be struck from the roll of the members of the bar, and he shall thereafter cease to be a member thereof. Upon appeal from a judgment of conviction, and pending the final determination of the appeal, the court may order the suspension from practice of the convicted member of the bar; and upon a reversal of the conviction, or the granting of a pardon, the court may vacate or modify the order of disbarment or suspension. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1103 (Mar. 3, 1901, ch. 854, § 219a, as added Apr. 19, 1920, ch. 153, 41 Stat. 561).

Changes are made in phraseology.

§ 11–2104. Censure, suspension, or disbarment by other courts.

The District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions,

may censure, suspend, or expel an attorney from practice, at their respective bars, for a crime involving moral turpitude, or professional misconduct, or conduct prejudicial to the administration of justice. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–775 (Apr. 1, 1942, ch. 207, § 10, 56 Stat. 196; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is derived from the first sentence of section 11–775 of D.C. Code, 1961 ed. For remainder of section 11–775, see section 11–2105 herein.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Enrollment of attorneys

The rule of the Municipal Court of the District of Columbia requiring that attorneys, before practicing, enroll, take a common oath, sign a roll and pay a small sum, was a reasonable requirement of procedure for efficient administration of justice. *Austin* v. *The Municipal Court, District of Columbia* (1956, 235 F. 2d 836, 98 U.S. App. D.C. 339, certiorari denied 77 S. Ct. 682, 353 U.S. 923, 1 L. Ed. 2d 720).

§ 11–2105. Procedure for censure, suspension, or disbarment.

A member of the bar may not be censured, suspended, nor expelled as provided by section 11–2102 or 11–2104, until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally by the United States marshal or such other person as the court designates, or if it is established to the satisfaction of the court that personal service can not be had a certified copy of the charges and order shall be served upon him by mail, publication, or otherwise as the court directs. After the filing of the written charges the court may suspend the person charged from practice at its bar pending the trial thereof. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–775, 11–1304 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 220, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; Apr. 1, 1942, ch. 207, § 10, 56 Stat. 196).

Section consolidates that part of section 11–775 of D.C. Code, 1961 ed., which related to procedure to be followed in the Municipal Court of Appeals or the Municipal Court (now, District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively), in the censure, suspension, or disbarment of attorneys, with section 11–1304 thereof, which related to the procedure in the District Court. The provisions were substantially identical. For remainder of section 11–775, see section 11–2104 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Conduct of trial 1
Review 2

1. Conduct of trial

Record in disbarment proceeding did not sustain assignment that court erred in refusing to direct a continuance to enable attorney to procure counsel and character witnesses, where record disclosed that attorney prepared and filed his answer pro se and at trial refused offer of court to appoint counsel, and that, although attorney sought continuance because of absence of character witnesses, trial counsel for grievance committee conceded that each witness would, if present, testify to attorney's good character, and on that understanding case proceeded. *Tulman* v. *Committee on Admissions and Grievances* (1943, 135 F. 2d 268, 77 U.S. App. D.C. 357).

2. Review

In disbarment proceeding, attorney's explanation in palliation was for trial court's consideration, and the trial court, in denying effect thereto, exercised its judicial discretion, which was not subject to review on appeal. *Tulman* v. *Committee on Admissions and Grievances* (1943, 135 F. 2d 268, 77 U.S. App. D.C. 357).

Chapter 23.—JURORS AND JURY COMMISSIONERS

Sec.
11–2301. Qualifications of jurors.
11–2302. Exemptions.
11–2303. Jury commission—Appointment, qualifications, oath, tenure, compensation, and removal.
11–2304. Record of names—Jury box—Custody.
11–2305. Selection of jurors.
11–2306. Manner of drawing.
11–2307. Substitution in case of vacancies.
11–2308. Disposition of box after drawing—Excuse from further service.
11–2309. Filling vacancies—Deficiencies in panel.
11–2310. Talesmen from bystanders.
11–2311. Summoning jurors.
11–2312. Length of service.
11–2313. Fees of jurors—Allowances.
11–2314. Marshal to have charge—Deputies.

§ 11–2301. Qualifications of jurors.

(a) Any citizen of the United States who has attained the age of 21 years and who has resided for a period of one year within the District of Columbia is competent to serve as a grand or petit juror in courts of the District unless he:

(1) has been convicted in a State, territorial, or federal court of record, or court of the District, of a crime punishable by imprisonment for more than one year, and his civil rights have not been restored by pardon or amnesty;

(2) is unable to read, write, speak and understand the English language; or

(3) is incapable by reason of mental or physical infirmities to render efficient jury service.

(b) An otherwise qualified person is not disqualified from jury service by reason of sex, but a woman may not be compelled so to serve. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–755, 11–936, 11–1417, 11–1418 (Mar. 3, 1901, ch. 854, §§ 45, 215, 31 Stat. 1197, 1223; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Feb. 26, 1927, ch. 220, 44 Stat. 1249; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 408, 67 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, § 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 2, 77 Stat. 78).

Section consolidates section 11–1417 of D.C. Code, 1961 ed., which related to qualifications of jurors, with that part of section 11–1418 thereof which prohibited disqualification of grand or petit jurors by reason of sex; that part of section 11–716a thereof which, as originally enacted, related to the Police Court and provided that

jurors serving in that court should have the legal qualifications necessary for jurors in the District Court; that part of section 11–716 thereof, which, with respect to the first Municipal Court (prior to its merger under section 11–751 thereof with the Police Court to form the second Municipal Court, now, under section 11–751a thereof, the District of Columbia Court of General Sessions), although not specifically referring to qualifications of jurors implied that they should have the same legal qualifications as jurors in the District Court by providing that jurors in the Municipal Court should be drawn and selected in the same manner as those drawn and selected for service in the District Court and by making applicable thereto the same laws relating to jurors that were applicable to jurors serving in the District Court; that part of section 11–755(a) thereof, which, in connection with the merger of the Police Court and the first Municipal Court to form the second Municipal Court (under section 11–751 thereof), impliedly continued the same set-up and procedure regarding juries and jurors in criminal and civil cases by providing that the Municipal Court thus established should have a criminal branch and a civil branch (later laws increased the number of branches) and that, in addition to other jurisdiction conferred, the court and its judges should have the same powers and jurisdiction theretofore had by the two courts prior to the merger; and that part of section 11–936 of the Code which, with respect to the Juvenile Court, provided that jurors serving in that court should have the legal qualifications necessary for jurors in the District Court.

Section 11–1417 of D.C. Code, 1961 ed., provided: "No person shall be competent to act as a juror unless he is a citizen of the United States, a resident of the District of Columbia, over twenty-one years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or misdemeanor involving moral turpitude."

The provisions of subsec. (a), as herein revised, are patterned upon 28 U.S.C., § 1861, which presumably already applies in the United States District Court for the District of Columbia. See 28 U.S.C., §§ 88, 132, 451. As herein set out, the provisions of this section apply to grand jurors and to petit jurors serving in any court of the District, including the District of Columbia Court of General Sessions.

The clause in section 11–1418 of D.C. Code, 1961 ed., "but the provisions of law relating to the qualifications of jurors and exemptions from jury duty shall in all cases apply to women as well as to men" is omitted as unnecessary. Subsec. (a) of this revised section and section 11–2302 herein are couched in general terms, and relate to both sexes, particularly considering subsec. (b) hereof.

For remainder of sections 11–716, 11–716a, 11–755, 11–936 and 11–1418 of D.C. Code, 1961 ed., see tables.

CROSS REFERENCE

Impaneling jury, see § 11–2306.

NOTES TO DECISIONS UNDER PRIOR LAW

Excusing as juror 1
Government employees 2
Persons voting outside district 3
Questions not raised in lower court 4

1. Excusing as juror

Where defendant had four peremptory challenges left, he can not claim prejudice because a woman juror was excused at her own request, after jury was accepted but not sworn. *Fall* v. *United States* (1931, 49 F. 2d 506, 60 App. D.C. 124, certiorari denied 51 S. Ct. 657, 283 U.S. 867, 75 L. Ed. 1471)

2. Government employees

Government employees and women are legally qualified for jury service, and bias is not to be implied to either class *Smith* v. *U.S.* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

Qualifications here prescribed do not furnish only test of juror's competency. Common-law provision is still in force making a government employee ineligible in a criminal case. *Crawford* v. *United States* (1909, 29 S. Ct. 260, 212 U.S. 183, 53 L. Ed. 465, 15 Ann. Cas. 392).

3. Persons voting outside district

Voting outside District of Columbia does not ipso facto deprive voter of residency in district; and therefore it was error to exclude from jury list all persons voting outside district. *Young* v. *United States* (1954, 212 F. 2d 236, 94 U.S. App. D.C. 54, certiorari denied 74 S. Ct 870, 347, U.S. 1015, 98 L. Ed. 1137).

4. Questions not raised in lower court

Objection to validity of this section made for first time on appeal, held too late. *Howard* v. *United States* (1928, 26 F. 2d 551, 58 App. D.C. 179).

§ 11–2302. Exemptions.

The following persons are exempt from jury service:

(1) members in active service in the armed forces of the United States;

(2) members of the fire and police departments of the United States and of the District of Columbia;

(3) public officers in the executive, legislative, or judicial branch of the Government of the United States or the Government of the District of Columbia who are actively engaged in the performance of official duties;

(4) attorneys-at-law in active practice;

(5) ministers of the gospel and clergymen of every denomination;

(6) physicians and surgeons in active practice;

(7) keepers of charitable institutions created by or under the laws relating to the District of Columbia; and

(8) persons employed on vessels navigating the waters of the District of Columbia.

All other persons, otherwise qualified according to law, whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired; all officers and enlisted men in the reserve components of the armed forces of the United States, all notaries public, all postmasters, and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, are qualified to serve as jurors in the District of Columbia and are not exempt from jury service. (Dec. 23, 1963, 77 Stat. 506, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1420 (Mar. 3, 1901, ch. 854, § 217, 31 Stat. 1224; Feb. 18, 1909, ch. 146, § 73, 35 Stat. 636; Aug. 22, 1935, ch. 605, 49 Stat. 682).

Clauses (1), (2) and (3), of this section, while they make no change in substance, instead of following, identically, the language in the first paragraph of section 11–1420 of D.C. Code, 1961 ed., with respect to the exemptions they cover, are patterned upon section 1862 of Title 28 U.S.C., which already applies to jury service in the United States District Court for the District of Columbia, and perhaps to other courts of the District, considering the sections of D.C. Code, 1961 ed., cited in revision note under section 11–2301 herein. The remaining clauses in this section are taken from the other provisions in section 11–1420 of D.C. Code, 1961 ed.

In clause (7), reference to "hospitals, asylums, almshouses" is omitted as redundant and covered by "charitable institutions"; and, in clause (8), reference to "captains and masters" is omitted as redundant and covered by "persons employed on vessels", etc.

The second (final) paragraph of section 11–1420 of D.C. Code, 1961 ed., contained a proviso, at the end, as follows: "*Provided*, That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law." This proviso is omitted, as apparently it was superseded by act June 29, 1940, ch. 446, 54 Stat. 689 (5 U.S.C. §§ 30n, 30*o*, 30p).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Bias 1
Constitutionality 2
Duty of the court 3
Government employees 4
Impartiality of jurors 5
Review 6

1. Bias

Bias of a prospective juror may be actual or implied. *United States* v. *Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 459).

2. Constitutionality

This section as amended in 1935, qualifying government employees and pensioners for jury service in criminal cases does not violate the sixth amendment to the United States Constitution providing for a trial by an "impartial jury." *United States* v. *Wood* (1936, 57 S. Ct. 172, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 459).

The 1935 amendment did not render this section either arbitrary or capricious so as to render it violative of the due process clause of the fifth amendment. *Id.*

The argument that the Code authorizing jury service by government employees is unconstitutional is without merit. Government employees are entitled to serve on juries. *Wright* v. *United States* (1950, 183 F. 2d 821, 87 U.S. App. D.C. 67).

3. Duty of the court

The trial court must be zealous to protect the right of an accused, and the court must do so without reference to an accused's political or religious beliefs however such beliefs may be received by a predominate segment of our population. Ideological status is not an appropriate gauge of the high standard of justice toward which our courts may not be content only to strive. *Dennis* v. *United States* (1950, 70 S. Ct. 519, 339 U.S. 162, 94 L. Ed. 734).

4. Government employees

Even though at common law a disqualification as to government employees existed, Congress has power to remove it. *United States* v. *Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78).

Four jurors, employed in Government service, but eligible by statute for jury service, were not subject to challenge for implied bias. *Great A. & P. Tea Co.* v. *District of Columbia* (1937, 89 F. 2d 502, 67 App. D.C. 30, certiorari denied 57 S. Ct. 794, 301 U.S. 691, 81 L. Ed. 1347).

Government employees are eligible for jury service, and fact that grand jury as finally constituted contained 13 government employees did not render indictment invalid. *Romney* v. *United States* (App. D.C. 1948, 167 F. 2d 521, certiorari denied 68 S. Ct. 1512, 334 U.S. 849, 92 L. Ed. 1771).

In the absence of any basis for challenge, we do not see how a right to challenge a panel as a whole can arise from the mere fact that the jury chosen by proper procedure from a proper elected panel turns out to be composed wholly of government employees. *Frazier* v. *United States* (1948, 69 S. Ct. 201, 335 U.S. 497, 93 L. Ed. 187, rehearing denied 69 S. Ct. 488, 93 L. Ed. 1072).

A holding of implied bias to disqualify jurors because of their relationship with the government is no longer permissible. Employees of the federal government are not challengeable solely by reason of their employment. *Dennis* v. *United States* (1950, 70 S. Ct. 519, 339 U.S. 162, 94 L. Ed. 734).

Government employees and women are legally qualified for jury service and bias is not to be implied to either class. *Smith* v. *U.S.* (1950, 180 F. 2d 775).

5. Impartiality of jurors

Court's action in excusing for cause on voir dire veniremen who answered affirmatively question whether they were opposed to capital punishment, was not error. *E. E Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Impartiality of a jury is not a technical conception. It is a state of mind, and for the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular test and procedure is not chained to any ancient and artificial formula. *Dennis* v. *United States* (1950, 70 S. Ct. 519, 339 U.S. 162, 94 L. Ed. 734).

6. Review

In action by bus passenger against bus company for injuries sustained when rear end of bus was struck by a post office department truck, there was no error in denial of bus company's request for a new jury panel based on presence of 16 government employees among the 24 prospective jurors. *United States* v. *D.C. Transit System, Inc.* (1959, 266 F. 2d 465, 105 U.S. App. D.C. 264, certiorari denied 80 S. Ct. 62, 361 U.S. 819, 4 L. Ed. 2d 62).

The fact that fourteen members of District of Columbia grand jury, investigating world arrangements with relation to production, transportation, refining and distribution of petroleum in possible violation of federal antitrust acts, are employees of United States Government is no valid reason for exercise of discretionary power of Federal District Court for such District to discharge grand jury. *In re Investigation of World Arrangements with Relation to Production, etc., of Petroleum* (1952, 107 F. Supp. 628).

§ 11–2303. Jury commission; appointment, qualifications, oath, tenure, compensation, and removal.

(a) The jury commission shall continue in the District of Columbia.

(b) The commission consists of three commissioners appointed by the United States District Court for the District of Columbia.

(c) Any person may be appointed a jury commissioner if he:

(1) is a citizen of the United States;

(2) is an actual resident of the District, and has been domiciled therein for at least three years prior to his appointment;

(3) owns real property in the District;

(4) is not engaged in the practice of law; and

(5) at the time of his appointment, is not a party to any cause pending in a court of the District.

A person otherwise qualified is not disqualified from service as a jury commissioner by reason of sex, but a woman may not be compelled so to serve.

(d) Jury commissioners shall be appointed or reappointed for terms of three years each, staggered so that one commissioner will be appointed each year; and they shall continue in office until the appointment and qualification of their successors.

(e) Each jury commissioner shall receive $10 per day for each day or fraction of a day when he is actually engaged in the performance of his duties, not to exceed five days in a month, nor $250 in a year, which shall be paid, upon the commissioner's certificate, by the United States marshal for the District of Columbia.

(f) Each jury commissioner, when appointed, shall take an oath of office prescribed by the District Court.

(g) The District Court may summarily remove a jury commissioner for:

(1) absence, inability, or failure to perform his duties; or

(2) misfeasance or malfeasance in office—

and may appoint another person for the unexpired term.

(h) If a jury commissioner is ill or otherwise unable to perform the duties of his office, or is absent from the District, the remaining two commissioners may perform the duties of the commission. (Dec. 23, 1963, 77 Stat. 506, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1401, 11–1418 (Mar. 3, 1901, ch. 854, § 198, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 558; Feb. 26, 1927, ch. 220, 44 Stat. 1249; Aug. 8, 1946, ch. 881, 60 Stat. 931; June 25, 1948, ch. 646, § 32(b). 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates part of section 11–1401 of D.C. Code, 1961 ed., with part of section 11–1418 thereof. All this section is derived from section 11–1401 except the last paragraph of subsec. (c) prohibiting disqualification by reason of sex. For remainder of section 11–1401 and section 11–1418, see sections 11–2304 and 11–2301 herein, respectively.

The provisions in section 11–1401 of D.C. Code, 1961 ed., restricting the period of appointments and removals to the "general term" of the District Court are omitted as obsolete. Under prior law, there were a "general term" and five "special terms" of the District Court and the latter were designated as, respectively, the circuit court, equity court, criminal court, probate court and district court (D.C. Code, 1961 ed., former sections 11–310, 11–311, which were repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110). This arrangement was changed upon the enactment of Title 28 U.S.C. into law in 1948, under which the District of Columbia was made a judicial district. Terms of the United States District Court for the District of Columbia are now governed by 28 U.S.C. §§ 137–141, and rules of court. See also, 28 U.S.C. § 452.

The provision of section 11–1401 of D.C. Code, 1961 ed., that the compensation of the jury commissioners should be paid "out of the appropriation for pay of bailiffs" is omitted as apparently obsolete. A lump-sum appropriation for fees, expenses, and costs of jurors, compensation of jury commissioners, and fees of United States commissioners and other committing magistrates is now made in annual judiciary appropriation acts. See the Judiciary Appropriation Act, 1963 (act Oct. 18, 1962, Pub. L. 87–843, title IV, 76 Stat. 1097 (1099).

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Challenge of jurors in criminal cases, see § 23–108.

Coroner's jury, see § 11–1902.

Juries for proceedings in juvenile court, see § 16–2382.

Juries in cases to condemn land for alleys and minor streets, see §§ 7–213a, 7–315, 7–317.

Juries in cases to condemn land for streets outside Washington and Georgetown, see §§ 7–205, 7–206, 7–209, 7–213a.

Juries generally, see § 11–2301 et seq.

Jury fees, see § 11–2313.

Jury in lunacy proceedings, see §§ 21–312, 21–314.

Jury to determine sanity of person charged with or convicted of crime, see § 24–301.

Jury trial in vagrancy proceedings, see § 22–3301.

Peremptory challenges, see § 23–107.

Special juries in proceedings to condemn land for United States, see § 16–1357.

Struck juries, see § 13–701.

FEDERAL RULES OF CIVIL PROCEDURE

Alternate jurors, see Rule 47, U.S. Code, Title 28, Appendix.

Juries and jury trials, see Rules 38, 39, 47.

NOTES TO DECISIONS UNDER PRIOR LAW

Application 1
Construction of prior law 2
Negroes, exclusion of 3
Oath of office 4
Terms of office 5

1. Application

This section applies alike to grand and petit jurors. *United States* v. *Griffith* (1925, 2 F. 2d 925, 55 App. D.C. 123).

2. Construction of prior law

A grand jury summoned prior to Jan. 1, 1902, could not be impaneled subsequent thereto when the new regulations went into effect and indictment found by such a grand jury is of no effect and void. *Clark* v. *United States* (19 App. D.C. 295).

If the code is silent as to the manner of procuring talesmen in capital cases when the regular panel is exhausted, one should then look to the common law or the law of Maryland prior to 1801. Sec. 1, D.C. Code 1901 (31 Stat. 1189, ch. 854). *Milano* v. *United States* (40 App. D.C. 379).

3. Negroes, exclusion of

The Court could take judicial notice of the presence in the District of Columbia of members of the Negro race possessing the qualifications of jurors, but could not take judicial notice of their exclusion, systematic or otherwise, from grand jury returning indictment without proof or offer of proof to that effect. *McKenzie* v. *U.S.* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

Fact that 19 members of jury panel selected in prosecution of three Negroes jointly indicted on charge of murder in perpetration of robbery were members of Negro race indicated that Negroes had not been systematically excluded from panel in violation of Fifth Amendment, and defendants could not complain that thereafter Government peremptorily challenged every Negro juror who had been called to sit in the panel. *Hall* v. *U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

4. Oath of office

Where grand jury commissioners took oath when they were originally appointed, fact that they did not take the oath again on their reappointment, did not render drawing of grand jury by such commissioners illegal. *Collazo* v. *United States* (1952, 196 F. 2d 573, 90 U.S. App. D.C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

5. Terms of office

Act of District Court in appointing grand jury commissioners for full three year terms when appointed to fill positions of commissioners who died or resigned in the middle of their terms instead of for balance of predecessors' terms, was not a violation of this section providing that commissioners shall be appointed and shall serve for term of three years and until their successors are appointed and qualified, except that members first appointed shall serve for one, two, and three years respectively, as may be designated by court. *Collazo* v. *United States* (1952, 196 F. 2d 573, 90 U.S. App. D.C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

§ 11–2304. Record of names—Jury box—Custody.

(a) The jury commission shall:

(1) make and preserve a record of the list of names of grand and petit jurors, including the names of commissioners and jurors in condemnation proceedings, for service in all the courts of the District having cognizance of jury trials and condemnation proceedings;

(2) write the names of the jurors, including the names of commissioners and jurors in condemnation proceedings, on separate and similar pieces of paper, which they shall so fold or roll that the

names can not be seen, and place them in a jury box to be provided for the purpose;

(3) thereupon seal the jury box, and after thoroughly shaking it, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping;

(4) have custody and control of the jury box;

(5) keep a sealed record, in alphabetical form, of all names remaining in the jury box from time to time, and deposit the record for safekeeping in the office of the clerk of the District Court when the commission is not in session.

(b) Only the commmission may unseal or open the jury box, or have access to the record required by clause (5) of subsection (a) of this section. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1401, 11–1403, 11–1404, 11–1411 (Mar. 3, 1901, ch. 854, §§ 198, 200, 201, 207, 31 Stat. 1222; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555 (558, 560); Aug. 8, 1946, ch. 881, 60 Stat. 931; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates the fourth sentence of section 11–1401 of D.C. Code, 1961 ed., with sections 11–1403 and 11–1404, and the second sentence of section 11–1411. For remainder of sections 11–1401 and 11–1411, see sections 11–2303 and 11–2306 herein.

The provision in section 11–1401 of D.C. Code, 1961 ed., that the jury commission shall draw the names of jurors and condemnation commissioners "from time to time, as hereinafter provided", is omitted as unnecessary, in view of the other provisions in this chapter prescribing the particular duties of the jury commission.

Changes are made in phraseology and arrangement.

§ 11–2305. Selection of jurors.

The jury commission shall select the jurors and commissioners specified by section 11–2304, as nearly as may be, from intelligent and upright residents of the District. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1402 (Mar. 3, 1901, ch. 854, § 199, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 558; June 29, 1953, ch. 159, § 408, 67 Stat. 107).

The provision in section 11–1402 of D.C. Code, 1961 ed., that the jurors shall be selected from the different parts of the District is omitted as covered by section 1865 of Title 28, United States Code.

Changes are made in phraseology.

§ 11–2306. Manner of drawing.

(a) Grand and Petit Jurors for District Court.—At least ten days before the commencement of each term of the United States District Court for the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without previous examination, the names of such number of persons as the court directs to serve as grand and petit jurors in the court; and

(2) forthwith certify to the clerk of the court the names of the persons so drawn as jurors.

If the United States attorney for the District of Columbia certifies in writing to the chief judge of the District Court, or in his absence, to the presiding judge, that the exigencies of the public service require it, the judge may, in his discretion, order an additional grand jury summoned, which shall be drawn at such time as he designates. Unless sooner discharged by order of the chief judge, or, in his absence, the presiding judge, the additional grand jury shall serve until the end of the term in and for which it is drawn.

(b) Number of Names in Jury Box.—At the time of each drawing of jurors by the jury commission, there shall be in the jury box the names of not less than six hundred qualified persons.

(c) Other Courts.—At least ten days before each term of the District of Columbia Court of General Sessions or of the Juvenile Court of the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without examination, the names of persons to serve as petit jurors in those courts; and

(2) forthwith certify to the clerk of the District Court the names of the persons so drawn.

In each drawing of jurors under this subsection, the jury commission shall draw, for service in the Court of General Sessions, such number of names as the court directs, and for service in the Juvenile Court, at least twenty-six names.

Upon receipt of the certification referred to in this subsection, the clerk of the District Court shall certify the names to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term.

(d) The distribution, assignment, reassignment, and attendance of petit jurors in courts of the District shall be in accordance with rules prescribed by the respective courts. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–751a, 11–755, 11–936, 11–937, 11–1407, 11–1408, 11–1411 (Mar. 3, 1901, ch. 854, §§ 45, 204, 207, 31 Stat. 1197, 1222; Jan. 31, 1902, ch. 5, § 1, 32 Stat. 2; Mar. 19, 1906, ch. 960, §§ 35, 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604), Apr. 19, 1920, ch. 153, 41 Stat. 559, 560; May 19, 1922, ch. 194, 42 Stat. 543; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; June 14, 1926, ch. 577, 44 Stat. 741; July 3, 1926, ch. 784, 44 Stat. 892; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 204, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–1407 and the first sentence of section 11–1411 of D.C. Code, 1961 ed., which related to the manner of drawing jurors and certification of the names drawn with those parts of sections 11–716, 11–716a, 11–936, and 11–937 thereof, which, with respect to the Police Court and the first Municipal Court (prior to the merger of those two courts, under section 11–751 thereof, to form the second Municipal Court), and the Juvenile Court, provided among other things that jurors for those courts should be drawn and selected under and pursuant to the laws concerning the drawing and selection of jurors for the District Court; with that part of section 11–755(a), which with respect to the merger of the Police Court and the first Municipal Court to form the second Municipal Court, provided (before its amendment by act Oct. 23, 1962) that the court thus formed (now the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof; and

with section 11–1408, which provided for the drawing and summoning of an additional grand jury upon certification of the United States attorney.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751 a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The first paragraph of subsec. (a), including clauses (1) and (2) thereof, which relates to the drawing of grand and petit jurors for the District Court, is derived from the first paragraph of section 11–1407 of D.C. Code, 1961 ed., which provided that, at least 10 days before the first Tuesday of each month specified in section "18–1405" (11–1405) when jury trials were to be had, the jury commission should "publicly break the seal of the jury box and proceed to draw", etc. Section "18–1405", referred to therein, is a misprint, and should read "11–1405", which was a section relating to the term of service of petit jurors in the District Court, and in connection therewith provided that such terms should begin on the first Tuesday of October, November, December, January, February, March, April, May, and June of each year and should terminate on the Monday preceding the first Tuesday of the next month thereafter, and among other things also provided that the court in "general term" might direct petit jurors to be drawn for monthly service in the court during the months of July, August, and September, "such service to begin and terminate as aforesaid".

Prior to the enactment, in 1948, of Title 28 of the United States Code, it was provided by statute that the District Court in the District of Columbia should have a general term for the transaction of business (but not for hearing any cause), and special terms (the number of which were to be fixed by the Court in general term) known as the circuit court, equity court, criminal court, probate court, and district court. However, in Title 28 of the United States Code, the District of Columbia is made a judicial district, and the time for holding regular terms is fixed by each district court. Each such court may also fix the time for any special terms pursuant to rules approved by the judicial council of the circuit, at which it may transact any business that may be transacted at regular terms. See 23 U.S.C. §§ 88, 132, 137, 141, 451. See, also, Rule 2 of the Local Rules of the U.S. District Court for the District of Columbia, which fix the commencement of terms of each division of the Court as the first Tuesday of January, April, July, and October.

In view of these changes in the status and operation of the District Court in the District of Columbia, subsec. (a) of this section, instead of fixing definite times for the drawing of jurors for the District Court, provides merely that at least 10 days before each term of the Court at which jury trials are to be had, the jury commission shall draw the names in the manner provided in the subsection. As before, the number of names to be drawn is left to the discretion of the Court.

The second paragraph of subsec. (a) is derived from section 11–1408 of D.C. Code, 1961 ed. In this paragraph, "presiding judge" is substituted for "senior associate judge," to conform with Title 28 U.S.C. § 136.

Subsec. (b) of this revised section is derived from the first sentence of section 11–1411 of D.C. Code, 1961 ed., cited above. Words in that sentence, "which names shall have been placed therein by said jury commission", are omitted as unnecessary and covered by section 11–2304 herein.

The three paragraphs of subsec. (c), including clauses (1) and (2) in the first paragraph, are derived from the third paragraph of section 11–1407 of D.C. Code, 1961 ed., and parts of section 11–716, 11–716a, 11–936, and 11–937 thereof. Section 11–716a, which, as originally enacted, related to the former Police Court, did not specify the number of names to be drawn for that court, and among other things provided merely that the jury for service in the court (which had criminal jurisdiction only) should consist of twelve persons, and that the jurors should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for the District Court. Under former section 11–609 of D.C. Code, 1961 ed., the Police Court held a term on the first Monday of every month, and might continue each term from day to day as long as it was necessary for the transaction of its business.

Section 11–716, which related to the first Municipal Court prior to its merger in 1942 with the Police Court to form the second Municipal Court, also provided that jurors for that court (which prior to the merger had civil jurisdiction only) should be drawn and selected in the manner provided for drawing and selecting jurors for the District Court, "as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October". It further provided that, at least 10 days before the term of service of jurors should begin, the clerk of the District Court should certify to the Municipal Court, for service as jurors for the then ensuing term, the names of not more than 36 persons, "drawn as directed by law". Those provisions were affected to some extent by the third paragraph of section 11–1407, as amended, the contents of which are stated below. Section 11–702 thereof provided that the Municipal Court should have the same terms of court "as those now obtaining, or as hereafter modified, in the circuit branches" of the District Court. The terms of the Municipal Court (now Court of General Sessions), since its merger with the Police Court, are, except for certain of its branches, fixed by court rule, permitted by section 11–754(a) of D.C. Code, 1961 ed., which is carried in to section 11–904 herein. Under the provisions thereof, the chief judge is empowered to fix the time of the various sessions of the court; and under the Rules of the Court, Section I, Rule 80, which relates to the civil division, and Rule 3(a) of the Court's rules relating to the criminal division, the terms of court begin on the first Tuesday of January, April, July, and October. Under Section II, Rule 1, of the rules, the Landlord and Tenant Branch, in which jury trials may be had on demand, holds sessions every week day except Saturday. Under Part I, Section III, Rule 1, the Small Claims and Conciliation Branch, in which jury trials may be had on demand, holds sessions every day except Sundays and legal holidays, and also in Wednesday of each week, at 7:30 p.m. This is required by statute. See section 11–816 of D.C. Code, 1961 ed., which is carried into section 11–1303 herein.

Section 11–936, enacted in 1938, provided that jury service in the Juvenile Court should consist of 12 persons, and that the jurors should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for the District Court; and section 11–937 thereof, also enacted in 1938, provided that, at least 10 days before the term of service of jurors for the Juvenile Court should begin, the jurors should be drawn, and at least 26 names so drawn be certified by the clerk of the District Court to the Juvenile Court for service as jurors for the then ensuing term. Terms of the Juvenile Court are fixed by statute. Section 11–905 of D.C. Code, 1961 ed. (see section 11–1504 herein), provided that the court shall hold a term on the first Monday of every month and continue the term from day to day as long as it might be necessary for the transaction of its business.

The third paragraph of section 11–1407 of D.C. Code, 1961 ed., which was last specifically amended in 1926, provided that, at least 10 days before the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, the jury commission should draw the names of persons to serve as jurors in the Municipal Court (until affected by the merger law of 1942, the section related to the Police Court) and in the Juvenile Court, and also the names of persons to serve as jurors "in any other court in the District of Columbia which hereafter may have cognizance of jury trials", and certify the respective list of jurors to the clerk of the District Court.

In view of the changed status and manner of operation of these courts since the above-mentioned provisions relating to the drawing of jurors were enacted, the three paragraphs of subsec. (c) of this revised section consolidate those provisions and provide merely that at least 10 days before each term of the Court of General Sessions or of the Juvenile Court, at which jury trials are to be had,

the jury commission shall draw (in the manner provided) the names of persons to serve as petit jurors in those courts, and certify them to the clerk of the District Court who, in turn, shall certify them to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term. In the case of the Juvenile Court, the drawing of at least 26 names is preserved. In the case of the Court of General Sessions, the number of names to be drawn is left to the discretion of the court. This conforms with present practice in that court.

The second paragraph of section 11–716 of D.C. Code, 1961 ed., relating to additional jurors for the first Municipal Court prior to its merger with the Police Court, provided:

"Whenever the judges of the municipal court shall certify in writing that the business of said court requires the services of additional jurors and shall file a certificate to that effect in the office of the clerk of the District Court of the United States for the District of Columbia, said District Court shall direct the clerk of the said District Court to certify to said municipal court for service as jurors for the then ensuing terms the names of such number of other persons as may be necessary for such service, which names shall be drawn as directed by law."

That paragraph is omitted as unnecessary, since the provisions for drawing jurors before the commencement of any term of the Court of General Sessions, as herein revised, no longer restrict the drawing to a maximum number of names. The number is left to the discretion of the court, as stated above.

Subsec. (d) of this section is from the second paragraph of section 11–1407 of D.C. Code, 1961 ed., and as herein set out relates to all courts of the District having cognizance of jury trials. This, also, is current practice.

Changes are made in phraseology and arrangement.

For remainder of sections 11–716, 11–716a, 11–755, 11–936, 11–937, and 11–1411 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Irregularities

Where pleas in abatement filed four years after indictment which shows that clerk of jury commissions, charged with duty of selecting persons, unlawfully abstracted names of prospective jurors so that other prospective jurors were not drawn, this constitutes a serious irregularity in organization of grand jury but is not sufficient to show that it is an illegal body; such pleas in abatement were also filed too late. *Hyde* v. *United States* (35 App. D.C. 451, certiorari granted 31 S. Ct. 228, 218 U.S. 681, 54 L. Ed. 1207, affirmed 32 S. Ct. 793, 225 U.S. 347, 56 L. Ed. 1114, Ann. Cas. 1914A, 614).

2. Panel exhausted

Where the list of jurors given to accused before trial contained the names of all jurors assigned to serve in the criminal division of the court, but after the panel was exhausted other jurors were called from the civil court, the statutory requirement was satisfied, there being no charge that the selected jury was disqualified. *Eagles* v. *United States* (1928, 25 F. 2d 546, 58 App. D.C. 122, certiorari denied 48 S. Ct. 603, 277 U.S. 609, 72 L. Ed. 1013).

3. Peremptory challenge

The right of peremptory challenge is given to be exercised on the party's sole discretion, and the right is given to secure a fair and impartial jury, not for creating ground to claim partiality which but for its exercise would not exist. *Frazier* v. *United States* (1949, 69 S. Ct. 201, 335 U.S. 497, 93 L. Ed. 187, rehearing denied 69 S. Ct. 488, 336 U.S. 907, 93 L. Ed. 1072).

4. Publicly break the seal

Act of assistant clerk in breaking seal of jury box and drawing jury when in the presence of the clerk and witnesses is a sufficient compliance with D.C. Code 1901 Edit., § 204 (31 Stat. 1222, ch. 854). *Fletcher* v. *United States* (42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434). See, also, *Patten* v. *United States* (42 App. D.C. 239).

5. Selecting the panel

The well settled rule is that, given a lawfully selected panel, free from any taint of invalid exclusion or procedures in selection and from which all disqualified for cause have been excused, no cause for a complaint arises merely from the fact that the jury finally shows itself not to be representative of the panel or indeed of the community. *Frazier* v. *United States* (1949, 69 S. Ct. 201, 335 U.S. 497, 93 L. Ed. 187, rehearing denied 69 S. Ct. 488, 336 U.S. 907, 93 L. Ed. 1072).

No prejudicial error was shown where counsel stated to the jury, "Now, I have exhausted my ten challenges, and here I have twelve government jurors who are to decide this defendant's case, which is a violation of the Federal statute, being brought in a Federal Court, prosecuted by a Federal prosecutor, and the case is presented by Federal agents." Given ten arbitrary choices among twenty-two prospective jurors, not disqualified for cause, of whom thirteen were government employees and nine privately engaged, he knowingly rejected nine of the latter and accepted without challenge but one of the former. *Id.*

6. Use of jury in different division

Fact that jury which tried civil case was drawn from criminal division of court, did not invade any right of defendant, particularly where defendant advanced no contention as to disqualification or lack of qualification of any individual juror or that any irregularity attended drawing of panel. *Guaranty Development Co.* v. *Circle Paving Co.* (D.C. Mun. App. 1951, 83 A. 2d 160).

7. Venire

Issuance of a venire is unnecessary when after the names of the grand jurors had been drawn the clerk certified those names to the marshal, who notified them of their selection and when to appear in court. *Patten* v. *United States* (42 App. D.C. 239).

§ 11–2307. Substitution in case of vacancies.

When a person whose name is drawn from the jury box is dead or has removed from the District before being selected, or removes therefrom after being selected, or becomes otherwise disqualified or disabled, the jury commission shall destroy the slip containing his name, and shall draw from the box the name of another person to serve in his stead. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1409 (Mar. 3, 1901, ch. 854, § 205, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 560).

Changes are made in phraseology.

§ 11–2308. Disposition of box after drawing—Excuse from further service.

When the requisite number of jurors has been drawn, the jury commission shall seal the jury box and deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping. Except in the case of persons who are excused from service or for other reasons fail to serve, the names of the persons drawn may not be placed again in the box for one year. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1410 (Mar. 3, 1901, ch. 854, § 206, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 560; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

§ 11–2309. Filling vacancies—Deficiencies in panel.

When persons drawn as grand or petit jurors cannot be found, or prove to be incompetent, or are excused from service by the court for which their names were drawn, the jury commission, under the order of the court, shall draw from the box the names of other persons to take their places, and if, after the organization of the jury, vacancies occur therein, the commission shall fill them in like manner. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716b, 11–755, 11–937, 11–1412 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 46, 208, 31 Stat. 1197, 1223; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Apr. 19, 1920, ch. 153, 41 Stat. 560; Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 26, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, § 2, 76 Stat. 1171; July 8, 1963; Pub. L. 88–60, § 2, 77 Stat. 78).

Section consolidates section 11–1412 of D.C. Code, 1961 ed., relating to filling jury vacancies with respect to the District Court, with those parts of sections 11–716, 11–716b, and 11–937 thereof, that respectively made applicable to the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11–716b related to that court), the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court the laws concerning the filling of deficiencies in a jury panel in the District Court. With respect to the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., also cited above, provided that, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed (now the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof. For remainder of sections 11–716, 11–716b, 11–755, and 11–937, see tables.

The provisions as redrafted in this section, relate to filling deficiencies in jury panels in the three courts, that is the District Court, the Court of General Sessions, and the Juvenile Court.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Panel exhausted

If any persons are incompetent, the clerk under court's direction shall draw from the box the names of others to take their places, and since this is the only method for procuring a jury in a capital case owing to the exception in § 353 (§ 11–1413), which provides that if during the impaneling, the court may in its discretion draw further names when the panel becomes exhausted, such jury is properly drawn consonant with intent of framers of the statute. *Milano* v. *United States* (40 App. D.C. 379).

§ 11–2310. Talesmen from bystanders.

When sufficient petit jurors are not available, the District of Columbia Court of General Sessions and the Juvenile Court have the same powers to require the United States marshal to summon a sufficient number of talesmen from the bystanders as those vested in the District Court by section 1866(a) of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716b, 11–751a, 11–755, 11–937 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 46, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 26, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Mar. 9, 1962, Pub. L. 87–413; § 3(d), 76 Stat. 22; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

While the text of this section is new, it is authorized by sections 11–716, 11–716b, and 11–937 of D.C. Code, 1961 ed., cited above, which respectively made the provisions of law relating to the filling of deficiencies in jury panels in the District Court applicable to the former Police Court (prior the act of April 1, 1942, the provisions of section 11–716b related to that court) the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court, and which further provided, in connection with such deficiencies, that judges of those courts should possess all the powers of a judge of the District Court and of that court sitting as a "special term" (see revision note under section 11–2306 herein); and by subsec. (a) of section 11–755 of the Code, cited above, which, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, provided that the court thus formed (now, the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof. For remainder of sections 11–716, 11–716b, 11–755, and 11–937, see tables.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The power of the District Court to require the United States marshal to summon a sufficient number of talesmen from the bystanders, whenever sufficient petit jurors are not available, is conferred by subsec. (a) of section 1866 of Title 28, United States Code, to which this section refers.

§ 11–2311. Summoning jurors.

When a petit jury has been drawn for the District of Columbia Court of General Sessions or the Juvenile Court, and the names of the jurors have been certified to the clerk of the court by the clerk of the District Court as provided by section 11–2306(c), the clerk of the former court shall issue summonses for the required number of jurors and deliver them to the United States marshal for the District for service. The marshal or his deputies shall serve each summons and make return of service in the manner provided by section 1867 of Title 28, United States Code, with respect to summoning jurors for district courts. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–751a, 11–755, 11–936 (Mar. 3, 1901, ch. 854, § 45, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 204, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

While the text of this section is new, it is presumably authorized by sections 11–716, 11–716a, and 11–936 of D.C. Code, 1961 ed., cited above, or implied by them, in the respective provisions thereof that jurors for service in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11–716a related to that court), the Municipal Court (prior to its merger, in 1942, with the Police Court), and the Juvenile Court should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in the District Court. Prior to its amendment by the act of

Oct. 23, 1962, subsec. (a) of section 11–755 of the Code, cited above, provided, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed (now, under section 11–751a of D.C. Code, 1961 ed., the Court of General Sessions) and the judges thereof should have and exercise the same powers previously vested in the prior courts and the judges thereof. For remainder of sections 11–716, 11–716a, 11–755, and 11–936, see tables.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 1867 of Title 28, United States Code, provides for summoning jurors for district courts, including the United States District Court for the District of Columbia, manner of service, and return of service.

§ 11–2312. Length of service.

(a) Petit jurors summoned for service in a court of the District shall serve for such period of time and at such sessions of the court as the court directs, but, unless actually engaged as a trial juror in a particular case, may not be required to serve in the District Court or the District of Columbia Court of General Sessions for more than one month in any twelve consecutive months, or to serve in the Juvenile Court for more than three months in any twelve consecutive months.

(b) Jury service in one court does not exempt, exclude, or disqualify a person from jury service in another court, except during his term of actual service.

(c) This section does not affect the provisions of section 1869 of Title 28, United States Code, relating to frequency of petit jury service in district courts, including the United States District Court for the District of Columbia. **(Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1.)**

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–716b, 11–751a, 11–755, 11–936, 11–937, 11–1405 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 45, 46, 202, 31 Stat. 1197, 1222; Mar. 19, 1906, ch. 960, §§ 35, 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Apr. 19, 1920, ch. 153, 41 Stat. 559; Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–1405 of D.C. Code, 1961 ed., which related to term of service of petit jurors in the District Court, with those parts of sections 11–716, 11–716a, 11–716b, 11–936, and 11–937 of the Code, which related to terms of service of petit jurors in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of sections 11–716a and 11–716b related to that court), the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court. In connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, subsec. (a) of section 11–755 of the Code, also cited above, provided (prior to its amendment by the act of Oct. 23, 1962) that the court thus formed (now, under section 11–751a of D.C. Code, 1961 ed., the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11–1405 of D.C. Code, 1961 ed., provided as follows:

"The respective terms of service of petit jurors drawn for service in the United States District Court for the District of Columbia shall begin on the first Tuesday of October, November, December, January, February, March, April, May, and June of each year and shall terminate on the Monday preceding the first Tuesday of the next month thereafter, except when the jury shall be discharged by the court at an earlier day, or when a jury shall be empaneled and it shall happen that no verdict shall have been found before the day appointed by law for the commencement of the next succeeding term, in which case the court shall proceed with the trial by the same jury in every respect as if its term of service had not ended; and all proceedings to final judgment, if such judgment shall be rendered, shall be entered and have legal effect and operation as of the term at which the jury shall have been empaneled: *Provided,* That the United States District Court for the District of Columbia in general term may direct petit jurors to be drawn for monthly service in said court during the months of July, August, and September, such service to begin and terminate as aforesaid.".

The provisions in the Code with respect to terms of service of jurors in other courts were as set out below.

Former Police Court.—Until affected by the merger act of Apr. 1, 1942, the provisions of section 11–716a provided in part that jurors in the Police Court should serve for a like term as the petit jury in the District Court, and provided further that: "When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury, as if said term had not commenced: *Provided,* That this section shall not be effective as to any panel or panels of jurors drawn under the existing law"; and, until also affected by the 1942 act, section 11–716b provided in part: "No person shall be eligible for service on a jury in said Police Court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such grounds unless objection shall be made before the trial begins. Service on such jury shall not render any person exempt, ineligible, or disqualified for service as a juror in said United States District Court for the District of Columbia, except during his term of actual service in said police court."

Municipal Court.—Section 11–716, which related to the Municipal Court prior to its merger, in 1942, with the Police Court, provided in part that the term of service of its jurors should be the same as that prescribed by the laws "now obtaining, or as hereafter modified", with respect to jurors in the District Court, "as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October".

Juvenile Court.—Section 11–936 provided that the term of service of jurors in the Juvenile Court should be for three successive monthly terms of the court, "and in any case on trial at the expiration of such time until a verdict shall have been rendered or the jury shall be discharged". It also provided that "The said jury terms shall begin on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, and shall terminate, subject to the foregoing provisions, on the Saturday prior to the beginning of the following term. When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury as if said term had not commenced". Section 11–937 provided in part that "No person shall be eligible for service on a jury in said juvenile court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins".

The provisions of the several sections referred to or quoted above are consolidated into this single section, and are simplified. To conform with section 11–2306 herein, the fixing of the time of commencement of jury service is left to the courts, but subsec. (a) places limits on the periods of required service in each of the courts of the District having cognizance of jury trials. See revision note under section 11–2306.

It will be noted that in subsec. (a) it is provided that, unless actually engaged as a trial juror in a particular case, a juror may not be "required" to serve for a longer time than the periods stated, rather than providing, as in sections 11–716b and 11–937 of D.C. Code, 1961 ed., that no person shall be "eligible" for jury service for more than one jury term in any period of twelve consecutive months. Therefore, the provision in each of those sections "but no verdict shall be set aside on such ground [on the ground of such ineligibility] unless objection shall be made before the trial begins" is omitted.

Section 1869 of Title 28, United States Code, referred to in subsec. (c), provides that in any district court (including the United States District Court for the District of Columbia) a petit juror may be challenged on the ground that he has been summoned and attended such court as a petit juror at any term held within 1 year prior to the challenge.

See, also, sections 138–141 of Title 28, United States Code, under which district courts fix their terms of court, both regular and special, by court rules (which in the case of special terms, must be approved by the judicial council of the circuit). Under section 141, any business may be transacted at a special term that might be transacted at a regular term.

For remainder of sections 11–716, 11–716a, 11–716b, 11–755, 11–936, and 11–937 of D.C. Code, 1961 ed., see tables.

§ 11–2313. Fees of jurors—Allowances.

Jurors serving in the District of Columbia Court of General Sessions and the Juvenile Court shall receive the fees fixed by section 1871 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–751a, 11–755, 11–936 (Mar. 3, 1901, ch. 854, § 45, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates those provisions of sections 11–716, 11–716a, and 11–936 of D.C. Code, 1961 ed., which related to the compensation of jurors serving in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11–716a related to that court), the Municipal Court, prior to its merger with the Police Court, and the Juvenile Court. In each of those sections, it was provided that jurors should receive the same compensation as that received by jurors in the District Court. Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., also cited above as one of the sources of this section, provided, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed (now Court of General Sessions) and the judges thereof should have and exercise the same powers and jurisdiction previously vested in the prior courts and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The above-mentioned provisions of sections 11–716, 11–716a, and 11–936 of D.C. Code, 1961 ed., as consolidated and rewritten in this section, refer to section 1871 of Title 28, United States Code, which is the section providing for compensation with respect to jurors in district courts (and before United States commissioners), including the United States District Court for the District of Columbia.

The provision of section 11–716 of D.C. Code, 1961 ed., that jurors in the Municipal Court (now Court of General Sessions) should be subject to the same duties and liabilities as those of jurors in the District Court is omitted as unnecessary in view of the consolidation in this chapter of the provisions relating to jurors in the several courts of the District.

For remainder of sections 11–716, 11–716a, 11–755, and 11–936 of D.C. Code, 1961 ed., see tables.

§ 11–2314. Marshal to have charge—Deputies.

The United States marshal for the District shall have charge of the juries in the District of Columbia Court of General Sessions and the Juvenile Court, and may assign deputies for the purpose. The deputies shall perform such other services as the judges may require. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–716b, 11–721, 11–751a, 11–755, 11–937 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, § 46, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 596 (604); Mar. 3, 1921, ch. 125, § 10, 41 Stat. 1312; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 2, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates the fourth sentence of section 11–716b of D.C. Code, 1961 ed., section 11–721 thereof, and the fourth sentence of section 11–937 thereof.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia (the second Municipal Court, formed from the 1942 court merger referred to below) to the District of Columbia Court of Special Sessions.

The provisions of section 11–716b of D.C. Code, 1961 ed., which related to the Police Court prior to its merger with the Municipal Court, specified by the fourth sentence thereof that "The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose". Identical provisions were contained in the fourth sentence of section 11–937 of the Code, which related to the Juvenile Court.

Section 11–721 of D.C. Code, 1961 ed., which related to the first Municipal Court prior to its merger with the Police Court to form the second Municipal Court (now, the Court of General Sessions), provided that "The marshal of the United States in and for the District of Columbia shall designate two of his deputies to take charge of the jurors in the municipal court, under the direction of the trial judge, and they shall perform such other services as the judge may require."

Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., also cited as one of the sources of this section, provided, in connection with the merger, by the act of Apr. 1, 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed and the judges thereof should have and exercise the same powers and jurisdiction theretofore vested in the prior courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the District of Columbia Court of General Sessions and the judges thereof should have the same powers and jurisdiction theretofore vested in the Municipal Court for the District of Columbia (the second Municipal Court, formed

from the 1942 merger mentioned above) and the judges thereof.

This section, with changes in phraseology, represents a consolidation of the above-quoted provisions of sections 11-716b, 11-721 and 11-937 of D.C. Code, 1961 ed., with the reference to the Court of General Sessions substituted for the references in those sections to the Municipal Court. For remainder of such sections, see tables.

For powers and duties of the marshals with respect to district courts (including the United States District Court for the District of Columbia) and other federal courts, see section 547 et seq. of Title 28, United States Code.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Governmental function

Execution of writ of restitution issued by Municipal Court for the District of Columbia was strictly a governmental function. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

TITLE 12.—RIGHT TO REMEDY

DISTRIBUTION TABLE

For disposition of former sections of this title, see table preceding Title 11.

Chap.		Sec.
1.	Abatement and Revivor	12–101
3.	Limitation of Actions	12–301

Chapter 1.—ABATEMENT AND REVIVOR

Sec.
12–101. Survival of rights of action.
12–102. Substitution of parties.
12–103. Judgment and costs in case of new party.
12–104. Marriage of party.

§ 12–101. Survival of rights of action.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action survives in favor of or against the legal representative of the deceased. In tort actions for personal injuries, the right of action is limited to damages for physical injury, excluding pain and suffering resulting therefrom. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–101 (Mar. 3, 1901, ch. 854, § 235, 31 Stat. 1227; June 19, 1948, ch. 508, § 1, 62 Stat. 487).

The second sentence of this section is rewritten from a clause of section 12–101 of D.C. Code, 1961 ed., which read "Provided, however, That in tort actions, the said right of action shall be limited to damages for physical injury except for pain and suffering resulting therefrom" in order to clarify the meaning of that provision. See *Soroka et al.* v. *Beloff*, 1950, 93 F. Supp. 642.

Other changes are made in phraseology.

CROSS REFERENCES

Actions for wrongful death, see §§ 16–2701 to 16–2703.

Dissolution of corporations, effect, see §§ 29–716 to 29–718.

Suits by or against executors or administrators, see § 20–501.

NOTES TO DECISIONS UNDER PRIOR LAW

Actions which always survived 1
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1. Actions which always survived

The statute providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of deceased has effect of extending the quality of survival to those actions which did not survive under the common law, and does not preclude an heir from suing upon a cause of action which had always survived. *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

2. Amendment of complaint

Where an act of negligence causing death gives rise simultaneously to two separate and independent claims, one under the Wrongful Death Act and the other under the Survival Act, the District Court erred in denying plaintiff's motion to amend her complaint to include a demand for damages under the Survival Act over and above the initial demand under the Wrongful Death Act on the ground that the remedies were mutually exclusive. *Sornborger, Executrix, etc.* v. *District Dental Laboratory Inc., et ano.* (1959, 266 F. 2d 694, 105 U.S. App. D.C. 290).

In administrator's action to recover for death of decedent and to recover for decedent's injuries sustained and loss of potential earning capacity, administrator would be allowed to amend complaint to increase damages claimed from $46,500 to $71,500. *Mitchell, Sr., Administrator* v. *Gundlach* (1956, 136 F. Supp. 169).

3. Application of statute

In an action to enforce a contract to convey property, statute is without application where right of action did not accrue prior to the death of defendant's wife but arose after her death. *Bennett* v. *Bennett* (1949, 83 F. Supp. 19).

4. Change of venue

Under statute providing for change of venue for convenience of parties and witnesses in interest of justice to other district or division where action might have been brought, United States District Court for District of Maryland could not transfer case to District of Columbia by administrator who was resident of District of Columbia, brought under District of Columbia survival and death statutes, against single defendant who was Maryland resident, and who was not amenable to personal service in district and who would not consent to transfer. *Mitchell, Sr., Administrator* v. *Gundlach* (1956, 136 F. Supp. 169).

5. —— Interest of justice

In District of Columbia's administrator's action against individual defendant who was resident of Maryland, based on injury sustained by decedent allegedly due to defective commodity manufactured and sold by defendant, evidence on interest of justice did not require that venue be transferred from Baltimore, Maryland, to Washington, D.C. *Mitchell, Sr., Administrator* v. *Gundlach* (1956, 136 F. Supp. 169).

6. Construction

While perhaps proviso excepting damages for pain and suffering is somewhat inartistically drawn, nevertheless it is not ambiguous and the legislative history supports this conclusion. *Phillips* v. *Lust* (1949 82 F. Supp. 63).

7. Damages

Generally, the law seeks to award compensation, and no more, for personal injuries negligently inflicted, but injured person may usually recover in full from a wrongdoer regardless of anything he may get from a "collateral source" unconnected with the wrongdoer. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

8. —— Death actions

In personal injury action, value of all reasonably necessary medical and hospital services furnished plaintiff's decedent without charge by naval hospital because he was veteran should have been included in determining amount of damages. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

Where plaintiff in personal injury action died while action was pending and action was revived in name of plaintiff's administratrix, decedent's probable future earnings during his life expectancy, discounted to present worth, should have been included in determining amount of damages for permanent injuries. *Id.*

Where deceased died within an hour after accident and no pecuniary damages were sustained, only nominal damages were recoverable under survival of action statute, and award of $300 for deceased's estate would be reduced to $1. *Coleman* v. *Moore et al.* (1953, 108 F. Supp. 425).

9. —— Pain and suffering

Disabilities sustained by one in automobile collision were not "pain and suffering", within exception in this section precluding recovery for pain and suffering of decedent prior to his death. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

Under this section providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided, however, that in tort actions, such right of action shall be limited to damages for physical injury except for pain and suffering, in case either plaintiff or defendant in personal injury action dies, measure of damages becomes limited to damages for physical injury other than pain and suffering. *Soroka et al* v. *Beloff* (1950, 93 F. Supp. 642).

This section providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided, however, that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, would be construed by application of rule of noscitur a sociis to read as though phrased, provided however, that in action for personal injuries, right of action shall be limited to damages for physical injuries, excluding, however, pain and suffering. *Id.*

10. Disbarment proceedings

Disbarment proceedings against attorney do not survive, although appeal was pending at his death. *Metzger* v. *O'Donoghue* (1923, 288 F. 461, 53 App. D.C. 107).

11. Emergency Rent Act

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act, § 45–1610, was not for an injury to person or to reputation, and therefore survived death of landlord. *Tyler* v. *Dixson* (D.C. Mun. App. 1948, 57 A. 2d 648).

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act, § 45–1610, was an action to recover for a "private wrong" and not for a statutory "penalty," and hence, upon death of landlord, action survived as to double the excess rent and was not limited to amount of excess rent actually paid, even if this section did not provide for survival of action for statutory penalty. *Id.*

12. Fraud

Complaint which alleged that defendant's marriage to plaintiff's mother, now deceased was a fraud upon mother because defendant at time of marriage ceremony, had another living wife not known to plaintiff's mother, and that deed conveying a joint interest in property owned by plaintiff's mother was executed by her to defendant as result of the purported marriage, sufficiently stated cause of action to set aside the deed on the ground of fraud *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

13. Incompetents

Statute of limitations does not begin to run against claim of committee for advances of sums to incompetent's estate for its benefit until committee enters final account with court, demands reimbursement for properly recorded advances, or dies with account open and unsettled. *Wm. H. Clarke, executor etc.* v. *V. K. Hickman, Jr., Committee etc.* (1962, 307 F. 2d 660, 113 U.S. App. D.C. 323).

14. Legal representative

The term "legal representative," as used in this section providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of the deceased, is not necessarily restricted to personal representatives of deceased but is sufficiently broad to cover all persons who, with respect to deceased's property, stand in deceased's place and represent deceased's interest, whether transferred to them by deceased's act or by operation of law. *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

Adopted son, as only heir of mother. was her "legal representative" for purpose of suit to set aside deed to realty executed by mother during her lifetime as result of alleged fraud. *Id.*

14.50. Lex loci

Ohio federal court action by administratrix for wrongful death of deceased in Washington, D.C., accident was governed by Ohio statute of limitations. *G. E. Meyers, Admt'x of the estate etc.* v. *Alvey-Ferguson Co., et al.* (1964, 331 F. 2d 223, U.S. App. Sixth Ct.).

15. Libel

Right of action for libel does not survive death of alleged libelee. *M. L. Shearer, Admtx etc.* v. *Bakery and Confectionery Workers etc.* (1961, 294 F. 235, 111 U.S. App. D.C. 39).

16. Object of statute

Object of statute changing rules of survival of action upon death of party, was to expand rather than limit surival. *Soroka et al.* v. *Beloff* (1950, 93 F. Supp. 642).

17. Partnerships

This section is not applicable to partnerships, since surviving partner is vested with legal title to the assets of the partnership, and after reducing them to possession will be accountable to representative of deceased partner. *Dingman* v. *Henry* (1922, 279 F. 795, 51 App. D.C. 339).

18. Personal injury

Where United States marshal was liable to plaintiff for forcible entry late at night of plaintiff's dwelling by his deputies in serving a warrant in a civil proceeding, marshal's subsequent death did not preclude plaintiff from recovering for personal injuries inflicted on him by deputies and his wrongful arrest as elements of his damages by virtue of former provisions of this section providing that actions for personal injuries should not survive in favor of or against legal representatives of deceased. *Colpoys* v. *Foreman* (1947, 163 F. 2d 908, 82 U.S. App. D.C. 349).

The cause of action for personal injury did not survive the death of the wrongdoer or the injured person. *Woolen* v. *Lorenz* (1938, 98 F. 2d 261, 68 App. D.C. 389).

19. Res judicata

Where success of executrix in suit to set aside testator's sale of realty would inure solely to individual benefit of executrix as sole beneficiary under will, ordinary distinction between her representative and her individual capacity was not material for purposes of application of doctrine of res judicata by virtue of prior ejectment suit against executrix individually. *Jamison* v. *Garrett.* (1953, 205 F. 2d 15, 92 U.S. App. D.C. 94).

Where former ejectment action brought by grantee of realty against possessor who claimed an equitable title under grantor's oral agreement to devise was settled by stipulation which provided that possessor should receive payment for all rights and should deliver to grantee a quitclaim deed, judgment therein, which incorporated stipulation, was res judicata of subsequent suit by possessor, as executrix of grantor's will of which she was sole beneficiary, to set aside sale of realty to grantee, but in which she failed to assert any ground which was unknown to her at time of ejectment action. *Id.*

Where appellant sued one Rich for injuries and before trial Rich died, appellant moved for substitution of administratrix and Court ordered complaint dismissed, the order of dismissal operated as an adjudication on the merits of the right of action and barred present suit. *Slack* v. *Rich* (1950, 182 F. 2d 706, 87 U.S. App. D.C. 123).

20. Slander

Where defendant in slander action died, all rights of action survived. *Soroka et al.* v. *Beloff* (1950, 93 F. Supp. 642).

§ 12–102. Substitution of parties.

The substitution of parties in civil actions in the United States District Court for the District of Columbia and District of Columbia Court of General Sessions is governed by the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 12–102 to 12–105, 12–107 to 12–111, 12–114 to 12–116 (Mar. 3, 1901, ch. 854, §§ 236–239, 241, 243–246, 249–251, 31 Stat. 1227–1230; June 30, 1902, ch. 1329, 32 Stat. 528).

Sections 12–102, 12–103, 12–104, 12–105, 12–107 to 12–111, and 12–114 to 12–116 of D.C. Code, 1961 ed., are consolidated and rewritten to provide for the applicability of the Federal Rules of Civil Procedure to the substitution of parties in civil actions in the District Court and the Court of General Sessions. Although those rules would apply in the District Court in the absence of this section, it seems advisable to provide specifically by statute, with respect to the substitution of parties, for applicability of the rules, in view of the question which has arisen as to whether the time limitation in Rule 25(a)(1) for substitution after death of a party is a valid subject for a rule of procedure. Compare *Perry* v. *Allen*, C.A. 5th 1956, 239 F. 2d 107, and *Foltz* v. *Moore-McCormack Lines, Inc.*, D.C.N.Y. 1956, 19 F.R.D. 301.

This section also makes the Federal rules applicable to the Court of General Sessions in such matters, because it is conceivable that the same question could arise with respect to Rule 25 of that court, which is patterned upon Rule 25 of the Federal rules, and which this section supersedes.

Section 12–102 of D.C. Code, 1961 ed., provided for substitution within 1 year of death of the defendant in an action at common law, except that the plaintiff had 6 months after the issuance of letters testamentary or of administration to make an executor or administrator of the deceased a party.

Section 12–103 of D.C. Code, 1961 ed., provided for substitution for a deceased plaintiff by the 4th day of the second term of the court after the term at which the death is suggested.

Section 12–104 of D.C. Code, 1961 ed., provided for a second substitution upon death of the substituted party or his removal as executor or administrator.

Section 12–105 of D.C. Code, 1961 ed., allowed the new party to use, rely upon, and amend the pleadings of his predecessor.

Section 12–107 of D.C. Code, 1961 ed., related to the death of one of several joint defendants.

Sections 12–108 to 12–111 of D.C. Code, 1961 ed., provided for substitution in case of death of parties in suits in equity.

Sections 12–114 to 12–116 of D.C. Code, 1961 ed., related to the measures for securing the appearance of the representative of a deceased party. These are covered by the provision of Rule 25(a)(1) that the motion for substitution shall be served upon persons who are not parties in the manner provided in Rule 4 for the service of a summons and may be served in any judicial district.

NOTES TO DECISIONS UNDER PRIOR LAW

Divorce 1
Ejectment 2
Prior law 3
Replevin 4
Within year 5

1. Divorce

The jurisdiction of the court over a divorce decree was not lost by reason of the death of the plaintiff. *Biscayne Trust Co.* v. *American Security & Trust Co.* (1927, 20 F. 2d 267, 57 App. D.C. 251).

2. Ejectment

Upon the death of a married woman (plaintiff in an ejectment action), her husband, who thereby becomes entitled to the estate by courtesy, could not be substituted in her place, and "a new action and summons on the part of the new plaintiff was essential." *Welch* v. *Lynch* (30 App. D.C. 122).

3. Prior law

The failure to bring in the representative of a deceased plaintiff by the tenth day of the second term of the court after the suggestion of death in pursuance of provisions of act of Maryland of 1785, ch. 80 § 1, could not apply to the case where there were two or more parties plaintiff, against the survivor or survivors of whom the action might be continued. *Corbett* v. *Pond* (10 App. D.C. 17).

4. Replevin

It is not competent for plaintiff in replevin to discontinue or dismiss his suit or voluntarily withdraw from it, without the consent of defendant, after the property has been delivered to him under the writ, unless he returns the property taken or makes good his loss; hence plaintiff's death does not bar action, and defendant has the right to compel the executor or administrator to become a party to the suit. *Corbett* v. *Pond* (10 App. D.C. 17).

5. Within year

The year within which proper representative must be made a party is measured from the death of defendants, and not from the time that plaintiff learned thereof. *Whelan* v. *Welch* (1921, 269 F. 689, 50 App. D.C. 173).

§ 12–103. Judgment and costs in case of new party.

In all cases where a new party is made to an action, the costs which accrued before the new party was made to the action shall be taxed as part of the costs in the action, and the judgment rendered shall be the same as if the action had been originally commenced between persons who are parties to the action. A defendant who is made a new party to the action may not be burdened with debts, damages, or costs beyond the amount of property or assets that have descended or come to his hands from the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–106 (Mar. 3, 1901, ch. 854, § 240, 31 Stat. 1229).

Changes are made in phraseology.

§ 12–104. Marriage of party.

An action does not abate by the marriage of a party. On application of a party the court may, on such terms and notice as it deems proper, allow and order any amendment in the pleadings and the making of any new or additional parties that the marriage may render necessary or proper. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–112 (Mar. 3, 1901, ch. 854, § 247, 31 Stat. 1229).

Changes are made in phraseology.

Chapter 3.—LIMITATION OF ACTIONS

Sec.
12–301. Limitation of time for bringing actions.
12–302. Disability of plaintiff.
12–303. Absence or concealment of defendant.
12–304. Actions stayed by court or statute.
12–305. Actions against decedents' estates.
12–306. Directions as to debts in a will.
12–307. Foreign judgments.
12–308. Actions by the United States.
12–309. Actions against District of Columbia for unliquidated damages—time for notice.

§ 12–301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be

brought after the expiration of the period specified below from the time the right to maintain the action accrues:

(1) for the recovery of lands, tenements, or hereditaments—15 years;

(2) for the recovery of personal property or damages for its unlawful detention—3 years;

(3) for the recovery of damages for an injury to real or personal property—3 years;

(4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment—1 year;

(5) for a statutory penalty or forfeiture—1 year;

(6) on an executor's or administrator's bond—5 years; on any other bond or single bill, covenant, or other instrument under seal—12 years;

(7) on a simple contract, express or implied—3 years;

(8) for which a limitation is not otherwise specially prescribed—3 years.

This section does not apply to actions for breach or contracts for sale governed by § 28:2–725. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88–241, § 1; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, §2.)

AMENDMENT

1964—Section 2 of act Aug. 30, 1964, amended section by adding the last paragraph.

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–201 (Mar. 3, 1901, ch. 854, § 1265, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Section is based on part of section 12–201. For remainder of that section, see tables.

The exception at beginning of this section is inserted to make it clear that a limitation for a particular type of action found in any other provision of law would take precedence over the general limitations of this section.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Adverse possession, period of limitation, see § 16–3301.

Common carrier's liability for personal injuries or death of employee, commencement of action within 1 year, see § 44–404.

Death actions, see § 16–2702.

Liens—

Fern and Varnum and Eastern Avenue viaduct, absence of limitation on action to recover part of cost, see § 7–515.

Hospital lien on moneys paid for personal injuries, limitation of enforcement action, see § 38–303.

Mechanics' liens, limitation of enforcement action, § 38–115.

Subways and viaducts to eliminate grade crossings, absence of limitation on actions to recover part of cost, see § 7–1215.

Quo warranto for damages for usurpation of office, commencement of action within 1 year, see § 16–3511.

Real estate salesmen's or broker's bond, commencement of action within 1 year, see § 45–1405.

Taxation—

Income and franchise tax, limitation period upon assessment and collection, see § 47–1586i.

Income and franchise tax refunds, limitation period, § 47–1408.

Personal property taxes, limitation on collection, see § 47–1408.

Usury, commencement of action within 1 year, see § 28–2704.

Wills—

Caveat within 1 year of probate decree, see § 19–309.

Testamentary directions respecting operation of statute of limitations to debts, see § 12–306.

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1. In general

There is an apparent conflict between this section and § 16–1501, as to the extent of the principal limitation of actions and also as to the extent of the saving to parties under disability; but in order to give effect to both sections, the last-mentioned section, being the act of Congress of March 3, 1899, must be read as an exception to this section. *Gwin* v. *Brown* (21 App. D.C. 295).

2. Accounts

An action against executrix, if regarded as one upon account, is barred in three years. *Anglo-Columbian Dev. Co.* v. *Stapleton* (1927, 19 F. 2d 683, 57 App. D.C. 209).

When there is a mutual account and the last item is barred by the statute of limitations, it is not proper for one of the parties to remove the bar of the statute by entering later items on his own side of the account. *Ross* v. *Fickling* (11 App. D.C. 442).

3. Accrual of cause of action

Upon the abandonment of a public improvement, cause of action for the return of assessment for benefits accrues at the time of abandonment. *District of Columbia* v. *Thompson* (1931, 50 S. Ct. 172, 281 U.S. 25, 74 L. Ed. 677).

Whatever right of action appellant might have had against the District occurred when the consideration passed (the date of the deed) and action was barred by the twelve-year period of the statute and by the three-year statute also. *Cobb* v. *Shore* (1950, 183 F. 2d 980, 87 U. S. App. D.C. 162).

Since no liability accrued until the date set by the comptroller, and since suit was brought within three years of that date, the action was not barred. *Strasburger* v. *Schram* (1938, 93 F. 2d 246, 68 App. D.C. 87).

In action by assignee to recover a call under direction of the court upon stockholder, the statute of limitations runs from the date of the order of the court. *Glenn* v. *Sothoron* (4 App. D.C. 125).

4. —— Account

An action against executrix, if regarded as one upon account, accrued on the date of the last item. *Anglo-Columbian Dev. Co.* v. *Stapleton* (1927, 19 F. 2d 683, 57 App. D.C. 209).

5. —— Bailments

Where plaintiff delivered to defendant moneys to be held by defendant until plaintiff needed the money transaction was in the nature of a gratuitous bailment for an indefinite time, and therefore statute of limitations did not begin to run until there was a demand by plaintiff for return of the money and a refusal or some other act of defendant inconsistent with the bailment *Irvine* v. *Gradoville* (1955, 221 F. 2d 544, 95 U.S. App. D.C. 263).

A bailor's right of action accrues only after bailee's breach of duty under contract, and hence this section begins to run only from time of refusal to perform the contract, so that this section does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee, or some other act of bailee inconsistent with bailment *Schupp* v. *Taendler* (1946, 154 F. 2d 849, 81 U.S. App. D.C. 59).

An action to recover personalty which plaintiffs had turned over to defendant, who agreed to keep it until plaintiffs should ask for it, which action was commenced within three years after demand and refusal to deliver the personalty, was not barred by three-year limitation of this section, since limitation does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee. *Id.*

6. —— Contracts

Creditor who testified as to part payments received on account from debtor and who introduced ledger sheets showing amounts received in part payment and the corresponding dates satisfied burden of proving payments which tolled the statute of limitations with respect to debt. *H. Dulberger* v. *A. C. Lippe* (D.C. App. 1964, 202 A. 2d 777).

Even if tenant's action against landlord for injuries sustained when stair railing broke were deemed one for breach of contract, cause of action accrued at date of injury, rather than at date railing was repaired in allegedly faulty manner. *Hanna* v. *Fletcher, Trustee* (1956, 231 F. 2d 469, 97 U.S. App. D.C. 310, 58 A.L.R. 2d 847, certiorari denied 76 S. Ct. 1051, 351 U.S. 989, 100 L. Ed. 1501).

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had refilled with cement had damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. *Poole* v. *Terminix Co. of Maryland and Washington, Inc.* (1953, 200 F. 2d 746, 91 U.S. App. D.C. 287).

Where contract for building a house contained a provision that the basement shall be dry and remain so for three years, statute of limitations in action for breach of contract began to run when the contractor abandoned his efforts to remedy condition, and not when the basement first became wet. *Zellan* v. *Cole* (1950, 183 F. 2d 139, 87 U.S. App. D.C. 9).

Claims arise when contracts are broken, not when the resulting damage is precisely ascertained and when applee failed to make due payments for materials and subjected appellant to claims of persons who had supplied them, he broke his contract and the suit was barred when filed more than three years later. *Herfurth, Jr., Inc.* v. *Acker* (1949, 177 F. 2d 38, 85 U.S. App. D.C. 158).

This section begins to run on conclusion of services, where it is not required by agreement or statute that an audit must be made before payment shall be due. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, the agent's cause of action against university for services "accrued" on April 21, 1933, and he could have brought his suit then or any time thereafter within the three-year period, since his rights did not await a check by the university auditors. *Id.*

A cause of action against estate of testate for recovery upon a quantum meruit for services performed, or for specific performance of a contract to compensate for services in will, accrued at death of promisor. *Hurdle* v. *American Sec. & Trust Co.* (1929, 32 F. 2d 954, 59 App. D.C. 58).

Where a broker is engaged to procure a loan on real estate, the statute of limitations, as far as it affects his right to recover commissions, runs from the time that he furnishes a person ready, able, and willing to make the loan, and not from the time of the contract of employment. *Daniel* v. *Drury* (1920, 267 F. 751, 50 App. D.C. 107).

Alleged breach of implied warranty to do a workmanlike job in constructing walls for drive-in theater occurred when walls were constructed, and three year statute of limitations began to run at such time and barred suit filed more than three years thereafter for breach of such warranty resulting in collapse of wall. *Foley Corp.* v. *Dove et al.* (D.C. Mun. App. 1954, 101 A. 2d 841).

When debt is payable in independent installments, the action accrues as it matures upon each, and if the obligee fails to act until statute of limitations has barred some of the installments, he can recover only for those not barred when his action was commenced. *Washington Loan & Trust Co.* v. *Darling* (21 App. D.C. 132).

7. —— Ejectment

In action to recover land and mesne profits, where complaint was filed more than 15 years after date on which it was alleged that defendants entered and unlawfully ejected the plaintiff, complaint showed on its face that it was barred by this section and hence, summary judgment for defendant was properly granted, since the cause of action "accrued" within meaning of this section at the time of the ejectment. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

8. —— Fraud

The three year limitation period provided by statute applicable in District of Columbia to actions for fraud begins only upon discovery of facts out of which the claim of fraud arises, or from time such facts should reasonably have been ascertained in the exercise of due

diligence. *Wiren* v. *Paramount Pictures* (1953, 206 F. 2d 465, 92 U.S. App. D.C. 347, certiorari denied 74 S. Ct. 378, 346 U.S. 938, 98 L. Ed. 426).

In action based on fraud, this section begins to run, not when cause of action accrued, but from discovery of facts out of which the claim arose, or from time when facts should have reasonably been found out in exercise of due diligence *Johnson* v. *Taylor* (1947, 73 F. Supp. 537). See, also, *White* v. *Piano Mart* (D.C. Mun. App. 1954, 110 A. 2d 542).

Three-year limitation period for action grounded on fraud begins when facts from which claim arose are discovered or from time when such facts should have been ascertained by due diligence. *Maddox* v. *Andy's Refrigeration & Motor Service Co. Inc.* (D.C. Mun. App. 1960, 160 A. 2d 799).

For purposes of principle that three-year limitation period for fraud begins from time when facts from which claim arose are discovered or from time when such facts should have been ascertained by due diligence, fraud is not discovered when one's prior knowledge is confirmed as correct by another. *Id.*

Bar of the statute of limitation will not commence to run in equity until the fraud has been discovered, or until such time as by the use of ordinary care it might reasonably have been discovered. *Lewis* v. *Denison* (2 App. D.C. 387).

This section would not commence to run against an action to recover damages of notary public and surety on his bond caused by alleged wrongful acknowledgment of signature of forged deed by notary, either against notary or surety, until notary's alleged fraud was discovered or might reasonably have been discovered by plaintiff, notwithstanding that it was not charged that surety participated in the alleged fraud. *Id.*

9. —— Negotiable instruments

In action for deficiency on deed of trust notes, this section begins to run from date of their maturity. *Hoffman* v. *Sheahin* (1941, 121 F. 2d 861, 73 App. D.C. 374).

A promissory note payable on demand is a present debt and the statute begins to run from its date. *Feucht* v. *Keller* (1939, 104 F. 2d 250, 70 App. D.C. 117). See, also, *Kenyon* v. *Youngmen* (1930, 40 F. 2d 812, 59 App. D.C. 300).

10. —— Sealed instruments

Where maker agreed to waive defense of limitation in consideration of withholding action on notes until the date when action on notes would otherwise have been barred by limitations but reserved all other defenses, holders of notes had power to maintain action on notes after date agreed on, and this section began to run anew after such date and action not brought within three years thereafter was barred, although agreement was under seal. *Noel* v. *Baskin* (1942, 131 F. 2d 231, 76 U.S. App. D.C. 332).

11. —— Torts

Action against landlord's contractor for injuries sustained by tenant due to contractor's allegedly faulty repair of stairway railing was based on negligence, founded in tort, and cause of action did not accrue, for limitations purposes, until injury resulted. *Hanna* v. *Fletcher, Trustee* (1956, 231 F. 2d 469, 97 U.S. App. D.C. 310, 58 A.L.R. 2d 847, certiorari denied 76 S. Ct. 1051, 351 U.S. 989, 100 L. Ed. 1501).

Action against railroad to recover damages for wrongful discharge of dining car waiter, commenced more than three years after his discharge, was barred by District of Columbia statute of limitations, since any cause of action for such damages accrued when waiter was discharged and his subsequent appeal under grievance procedure of collective bargaining agreement did not toll the running of the statute. *Condol* v. *Baltimore & O. R. Co.* (1952, 199 F. 2d 400, 91 U.S. App. D.C. 255).

Statute of limitations runs against motorist's claim for damages sustained in collision, from date of collision. *Blair* v. *Bryant* (D.C. Mun. App. 1953, 96 A. 2d 508).

12. Action after dismissal

Where personal injury action filed on July 31, 1956, for personal injuries sustained on July 2, 1955, was dismissed for want of prosecution, and notice of appeal was filed but the appeal was abandoned, suit covering the same subject matter filed on January 13, 1959, which was more than three years after happening of the alleged accident, was barred by the statute of limitations. *Harris* v. *Penn Railroad Co., etc.* (1959, 273 F. 2d 524, U.S. App. D.C.).

13. Adverse possession

If testator's right of entry is barred by adverse possession and statute of limitations, a devisee takes nothing under the devise. *Dangerfield* v. *Williams* (26 App. D.C. 508).

Adverse possession for 15 years confers title, and § 16–1501 has no application in an action of ejectment based upon adverse possession. *McMillan* v. *Fuller* (41 App. D.C. 384).

Possession for statutory period by cultivation, pasturage, or other means is sufficient under law of District of Columbia to produce title by "adverse possession", provided it is open, notorious, continuous, and adverse. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

14. Amendment of pleadings

Where issues relating to right of sole existing residuary legatee to recover amount paid by executor in December, 1956, to satisfy note originally executed by decedent but later assumed by corporation owned by defendant were raised for first time in amended complaint filed in November, 1961, they constituted new matter unconnected with original complaint filed in March, 1959, and could not relate back to 1959 complaint so as to prevent bar of limitations. *M. Nunnally* v. *J. F. Miller* (1964, 330 F. 2d 843, — U.S. App. D.C. —).

Where Federal District Court, in dismissing with prejudice Count 3 of complaint containing multiple claims, except as to claim for services rendered subsequent to certain date, indicated that it tentatively agreed with defendant's contention that claims of Count 3 were barred by limitations, but did not make determinations necessary to effect finality, and no responsive pleadings were filed by defendants, and an effort was made by plaintiff to amend Count 3 before entry of final judgment of dismissal, District Court was required to exercise its discretion in determining whether plaintiff was entitled to amend Count 3. *Cassell* v. *Michaux* (1957, 240 F. 2d 406, 99 U.S. App. D.C. 375).

Where streetcar passenger sued streetcar company for her injuries sustained when streetcar collided with automobile, the streetcar company filed third-party complaint against motorist on ground that motorist's negligence was cause of passenger's injuries, passenger never asserted direct claim against motorist either in passenger's complaint or by amendment thereto, jury found that streetcar company was not negligent and that motorist was negligent and third-part action was dismissed, passenger would not be permitted to amend complaint to include motorist as codefendant at a time when passenger's claim against motorist had become barred by three-year statute of limitations, notwithstanding that streetcar company had impleaded the motorist as third-party defendant prior to time that the statute had run on the passenger's claim against motorist. *Holmes* v. *Capital Transit Co., et ano.* (D.C. Mun. App. 1959, 148 A 2d 788).

Where the cause of action remains the same, an amendment changing it in a different form is not open to the defense of the statute of limitations. *Beasley* v. *Baltimore & P.R.R.* Co. (27 App. D.C. 595, 6 L.R.A., N.S., 1048). See, also, *District of Columbia* v. *Frazer* (21 App. D.C. 154).

An amendment made for the purpose of curing a defective cause of action will relate back to time of filing the original petition; and if made after the time limit of the statute, will not be barred itself or cause original petition, which was filed in time, to be barred. *Goodacre* v. *Shulmier* (1935, 73 F. 2d 519, 94 App. D.C. 10).

15. Assault

Limitation of three years applies to a suit against the Director General of Railroads for damages for assault by special officer of railroad acting within the scope of his employment. *Mellon* v. *Seymoure* (1926, 12 F. 2d 836, 56 App. D.C. 301).

16. Assignments

Where period of limitations prescribed by applicable District of Columbia law had run prior to assignment of obligation to United States, United States was barred from maintaining action on claim. *United States* v. *Taylor* (1956, 144 F. Supp. 15).

17. Commencement of action

The filing of complaint "commenced" action within rule 3 of Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, for purpose of determining whether action to recover land was barred by 15-year limitation of this section. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

18. Computation of period

In computing limitation for action for malicious prosecution, the day on which cause of action accrued should be excluded. *Freeman* v. *Pew* (1932, 59 F. 2d 1037, 61 App. D.C. 223).

The time between the death of the deceased and the granting of letters testamentary is not to be counted in determining whether or not the statute of limitations has run. *National Sav. & Trust Co.* v. *Ryan* (1920, 262 F. 613, 49 App. D.C. 159).

This jurisdiction prefers the rule followed in New York and Pennsylvania, which excludes the day on which the cause of action accrues, as a point of time after which the limitation ensues. *Ambrose* v. *Brown* (42 App. D.C. 25).

19. Conflict of laws

District of Columbia statute of limitations governed actions for enforcement in District of Columbia, of claim for $6,000 as plaintiff's unsatisfied equity arising out of deed even though defendant's obligation, if any, had been created in New Jersey. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Where a Florida contract was sued upon in the District, the court applied the D.C. Code as the law of the forum. *Wells* v. *Alropra Corp.* (1936, 82 F. 2d 887, 65 App. D.C. 281).

If by the law of the state which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, no action begun after the period has elapsed can be maintained in any jurisdiction. *Moran* v. *Harrison* (1937, 91 F. 2d 310, 67 App. D.C. 237, 113 A.L.R. 505, certiorari denied 58 S. Ct. 142, 302 U.S. 740, 82 L. Ed. 572).

A limitation on the time of suit is procedural and is governed by the law of the forum. *Kaplan* v. *Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

Suit on a policy of life insurance brought within the six-year statute of limitations of New York, where the policy was to be paid, was barred by the three-year statute of the District of Columbia where the suit was brought. *Id.*

Where plaintiffs ceased to be employees of railroad and commenced action in United States District Court for District of Columbia against railway brotherhoods for breach of fiduciary duty to fairly represent plaintiffs in course of collective bargaining and the action in interest of justice and for convenience of parties and witnesses was transferred to Kentucky federal district court for trial, the applicable statute of limitations was the District of Columbia three-year statute and not the Kentucky five-year statute. *Hargrove et al.* v. *Louisville & Nashville Railroad Co., Brotherhood, etc.* (1957, 153 F. Supp. 681).

Where there is no applicable federal statute of limitations, the law of the state where the district court sits determines the period within which the suit may be brought. *United States* v. *Taylor* (1956, 144 F. Supp 15).

Under Pennsylvania law, Pennsylvania courts are required to follow District of Columbia statute of limitations, if cause arose in District of Columbia, in view of Pennsylvania statute providing that when cause has been fully barred by laws of state in which it arose, such bar is complete defense to action in Pennsylvania. *Id.*

Where decedent loaned defendant $10,000 by giving him check for that amount on District of Columbia bank, in certain restaurant in District of Columbia, cause of action for recovery of indebtedness arose in District of Columbia, and three-year statute of limitations of District of Columbia was applicable in Pennsylvania Federal Court action, within Pennsylvania statute making District of Columbia limitation statute applicable if cause arose in district. *Id.*

The three-year District of Columbia limitation, and not the one-year Virginia limitation, applied to action in District of Columbia to recover for a common-law tort which occurred in Virginia, since Virginia statute of limitations does not destroy the cause of action, but merely bars bringing of the action after the statute has run. *Bell et aux.* v. *Kelly Motor Lines, Inc.* (1951, 95 F. Supp. 682).

Statutory period of limitation applicable to simple contract action in District of Columbia, applies to actions brought upon a contract which has the effect of a specialty in the place where made. *Willard* v. *Wood* (1 App. D.C. 44, affirmed 17 S. Ct. 176, 164 U.S. 502, 41 L. Ed. 531).

20. Conspiracy action

Complaint, in action for conspiracy, not alleging any other tortious acts, except of certain slanderous statements allegedly made by defendants, but which were both privileged and barred by statute of limitations, did not state cause of action. *Burns* v. *Spiller* (1945, 4 F.R.D. 299, affirmed 161 F. 2d 377, 82 U.S. App. D.C. 91, certiorari denied 68 S. Ct. 101, 332 U.S. 792, 92 L. Ed. 373).

21. Constructive notice

August 16, 1946, contract for sale of land and October 7, 1946, deed identifying the property by lot and square number incorporated means by which purchaser might have ascertained true boundaries and dimensions, and purchaser had constructive notice of public records containing precise metes and bounds of property at a time more than three years prior to his October 10, 1949, filing of action against vendor for fraud and misrepresentation as to location of rear boundary, and hence purchaser was precluded by statute of limitations from maintaining action. *Robinson* v. *Orem* (1952, 198 F. 2d 86, 91 U.S. App. D.C. 96).

22. Contracts

When plaintiff claimed she rendered services under an express contract for a specified monthly compensation but more than three years elapsed between date payment became due and bringing of the action, the claim is barred by § 1265 of 1901 Code (this section), which provides a three-year period on express or implied contracts. *McCurley* v. *National Sav. & Trust Co.* (1919, 258 F. 154, 49 App. D.C. 10). See, also, *Booger* v. *Roach* (25 App. D.C. 324).

Limitation of three years applies to a suit against estate of testate for recovery upon a quantum meruit for services performed, or for specific performance of contract to compensate for services in will. *Hurdle* v. *American Sec. & Trust Co.* (1929, 32 F. 2d 954, 59 App. D.C. 58).

Section was applicable to action on contract brought in United States Court for China. *Chalaire* v. *Franklin* (C.C.A. 9, 1936, 81 F. 2d 105, certiorari denied 56 S. Ct. 942, 298 U.S. 678, 80 L. Ed 1399).

Where university architect was appointed agent of university land extension committee, even if activities of the agent after completion of his connection with the extension project was an authorized service to university so as to entitle the agent to compensation therefor, such additional activities were under a new appointment and the running of this section on the services rendered in connection with the extension project would not be affected; there being a lack of continuity between the two employments. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

Action for declaration that Indian had right to contract with plaintiff in respect to real property which had been allotted and inherited by the Indian was barred by statute of limitations and by laches where not brought for more than 20 years. *Spriggs* v. *McKay, Secretary of the Interior et al.* (1954, 119 F. Supp. 232, affirmed 228 F. 2d 31, 97 U.S. App. D.C. 60).

One who knew that his contract for repair of his property was breached because he had knowledge that his property remained in state of disrepair could not wait more than the three-year limitation period to assert his remedy. *Maddox* v. *Andy's Refrigeration & Motor Service Co., Inc.* (D.C. Mun. App. 1960, 160 A. 2d 799).

The limitation on actions based on the breach of a simple contract is three years. *Guthrie* v. *Greenfield* (D.C. Mun. App. 1954, 109 A. 2d 783).

Where attorney was employed to prosecute client's claim for damages because of alleged illegal confinement in hospital and case was tried in April, 1939, action instituted by client in April, 1944, against attorney for alleged breach of contract and breach of professional duty was barred by three-year statute of limitations. *Case* v. *Ricketts* (D.C. Mun. App. 1945, 42 A. 2d 304).

23. —— Breach of warranty

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had refilled with cement and damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. *Poole* v. *Terminix Co. of Maryland & Washington, Inc.* (1953, 200 F. 2d 746, 91 U.S. App. D.C. 287).

In action by purchaser of a house for breach of warranty, contained in sales contract, that basement was guaranteed dry for one year, purchaser was entitled to be placed in same position as if there had not been any breach. *Guthrie* v. *Greenfield* (D.C. Mun. App. 1954, 109 A. 2d 783).

Cause of action based on breach of implied warranty to do work in workmanlike manner would be barred by statute of limitations where breach occurred more than three years before commencement of action. *Poole* v. *Terminix Co. of Maryland & Washington* (D.C. Mun. App. 1952, 84 A. 2d 699).

24. —— Repudiation

Where payee of two-year note paid premiums on life policies which makers had assigned as security, failure of makers ever to reimburse payee for such payments constituted, after time, repudiation of any agreement which may previously have existed to reimburse payee for payment of premiums. *Munter, Sole Liquidation Trustee* v. *Lankford* (1956, 232 F. 2d 373, 98 U.S. App. D.C. 116).

Where, incident to execution of two-year note in 1935, makers assigned life policy to payee as security and, upon expiration of policy in 1939, a maker assigned new policy, cause of action of payee upon repudiation of agreement to reimburse payee for payment of policy premiums was barred by statute of limitations, in case of action begun in 1953, especially in view of absence of waiver of statute of limitations in 1939 policy assignment. *Id.*

25. —— Conditional sales

Though if conditional sales contract was under seal it was subject to twelve-year period of limitations, a three-year limitation was applicable where seller failed to prove that buyer signed contract. *Stern Equipment Co., Inc.* v. *Pogue* (D.C. Mun. App. 1955, 117 A. 2d 447).

26. Contribution

Statute of limitations begins to run against right to contribution only from time of disproportionate discharge of common obligation by one of the common obligors. *Bair* v. *Bryant* (D.C. Mun. App. 1953, 96 A. 2d 508).

27. Corporations

Where it was not clear that there was unreasonable delay on part of the United States in bringing suit to rescind transfers of shares of stock by trustees of charitable corporation organized in District of Columbia, suit was not barred by laches or by three-year statute of limitations. *Mount Vernon Mortgage Corporation* v. *United States* (1956, 236 F. 2d 724, 98 U.S. App. D.C. 429, certiorari denied 77 S. Ct. 386, 352 U.S. 988, 1 L. Ed. 2d 367).

28. Defense, statute a

Statute of limitations is available as defense and not as a cause of action, and a suit to cancel lien of deed of trust can not be upon the ground that the power of sale under the trust deed was barred by statute. *Talbott* v. *Hill* (1920, 261 F. 244, 49 App. D.C. 96).

Statute of limitations is "one of repose, and not one of payment or cancellation. It is a bar to the remedy only and does not extinguish or even impair the obligation of the debtor." *Hall* v. *District of Columbia* (47 App. D.C. 552). See, also, *Talbott* v. *Hill* (1920, 261 F. 244, 49 D.C. 96); *Miles* v. *McGrath* (D.C. Md. 1933, 4 F. Supp. 603).

29. Disability

Action, filed on December 3, 1952, for assault and battery allegedly committed on May 18, 1951, was barred by one year statute of limitations, irrespective of whether plaintiff was non compos mentis for period of over six months, from May 30, 1951, to December 20, 1951, and irrespective of whether such disability was caused by the assault and battery, where plaintiff claimed only that such disability arose twelve days after the injury, and not that it existed at time cause of action accrued, and where, in any event, plaintiff had almost five months within which to bring suit after his disability was removed. *Taylor* v. *Houston et al.* (1954, 211 F. 2d 427 93 U.S. App. D.C. 391, 41 A.L.R. 2d 724).

30. Equitable actions

When in equity an attempt was made to avoid a devise as invalid on its face, the statute of limitations will be applied by analogy, and relief will be denied where there has been delay of more than statutory period. *Columbia University* v. *Taylor* (25 App. D.C. 124).

In cases of concurrent jurisdiction courts of equity will hold themselves bound by the statute of limitations that would govern an action at law upon the same demand; and where the subject-matter of the demand is one ordinarily cognizable at law, but, by reason of special conditions, the remedy for its enforcement in the particular case is obtainable solely in equity, the bar of limitation will be applied, either in obedience to the statute, or by analogy in the same way as at law. *Washington Loan & Trust Co.* v. *Darling* (21 App. D.C. 132).

31. —— Bond and mortgage or deed of trust

Enforcement in equity of mortgages and deeds of trust of real estate is governed by twenty-year period of statute of limitations. *Sis* v. *Boarman* (11 App. D.C. 116).

On petition of holder of one note to participate in proceeds of sale of mortgaged property by foreclosure at the instance of the holder of the other note, the bar of limitations is not that applicable to an action on the note, but that which applies to the remedy for the enforcement of an equitable right under the mortgage; and the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (9 App. D.C. 373).

32. Estates, claims against

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *Lewis* v. *Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

33. Estoppel

Where university architect was appointed agent of university land extension committee, but university never acknowledged the correctness of the architect's claim for additional compensation as agent, or that it owed anything or that it would pay anything, there were negotiations looking toward an amicable settlement, but there was strong opposition in the board of trustees to the payment of the claim, and the only assurances were to the effect that the architect would be fairly dealt with, the doctrine of equitable "estoppel" did not preclude the university from asserting this section. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

If, by agreement to arbitrate, plaintiffs by action of defendant were induced not to bring their suit, defendant would be "estopped" from pleading the bar of this section, but if, after the agreement was made to submit to arbitration, plaintiffs took no steps toward having the matter submitted and did not insist on defendant's submission of the matter, the agreement could not be held to stop the running of this section. *Id.*

Where university architect was appointed agent of university land extension committee, and practically from the time of submission of the architect's claim for additional compensation for services rendered as agent to time when suit was brought, attitude of board of trustees was one of question, if not of active opposition to payment, and, after it became evident that the claim would probably not be recognized, the architect had ample time to bring suit before bar of this section fell, but he even delayed in presenting his claim to the university, the conduct of the university did not work an "estoppel", since it did not lull the architect into inaction until after the limitation period. *Id.*

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass* v. *Eiker, trading as T. E. Eiker & Co.* (D.C. Mun. App. 1957, 135 A. 2d. 153).

Where employer repeatedly assured employee that overtime claims had not been settled and promised to advise employee of action taken by Wage and Hour Division and by Maritime Commission, but failed to do so and employee brought action for overtime, etc., about four months after he learned that claims had been denied, trial judge properly held that employer was estopped to plead limitations. *McCloskey & Co.* v. *Dickinson* (D.C. Mun. App. 1948, 56 A. 2d 442).

"A defendant can not avail himself of the bar of the statute of limitations, if it appears that he has done anything that would tend to lull the plaintiff into inaction, and thereby permit the limitation prescribed by the statute to run against him." *Hornblower* v. *George Washington University* (31 App. D.C. 64, 14 Ann. Cas. 696).

34. Executor's bond

Where there was no suggestion of misconduct of executrix in record, statute permitting suit on executor's bond within five years did not apply to claim rejected by executrix. *McNeill and Fuller* v. *Selby* (D.C. Mun. App. 1955, 116 A. 2d 160).

35. Foreign judgments

"The section (this section) is lengthy and prescribes periods of limitation for many actions, civil and criminal, specially enumerated therein. The clause aforesaid (not otherwise provided for) was apparently intended to remedy a possible omission of some action that might have been properly embraced in that enumeration. Foreign judgments were provided for specially in section 1267 (§ 12–203)," and therefore, are not embraced in this section. *McKay* v. *Bradley* (26 App. D.C. 449).

36. Fraud

Allegation in a complaint for damages predicated on fraud that there was discovery of the alleged fraud contemporaneously with filing of the complaint precluded dismissal of complaint based on bar of statute of limitations, at least for purposes of a motion to dismiss for failure to state a cause of action. *Page* v. *Comert et al.* (1957, 243 F. 2d 245, 100 U.S. App. D.C. 139).

Complaint filed September 28, 1948, for fraud arising out of bribery of federal judge in May 1932, discovered according to complaint in 1937, was subject to three year statute of limitations applicable in District of Columbia, and, in absence of allegations enlarging the three year period, the action could not be maintained. *Wiren* v. *Paramount Pictures* (1953, 206 F. 2d 465, 92 U.S. App. D.C. 347, certiorari denied 75 S. Ct. 378, 346, U.S. 938, 98 L. Ed. 426).

Action for fraud in inducing plaintiff to purchase realty, barred in three years. *District-Florida Corp.* v. *Penny* (1933, 66 F. 2d 794, 62 App. D.C. 268).

Partners asking for an accounting of a partnership dissolution agreement, on the ground of fraud, four years later, are barred by laches. *Singer* v. *Friedman* (1936, 85 F. 2d 690, 66 App. D.C. 191, certiorari denied 57 S. Ct. 116, 299 U.S. 590, 81 L. Ed. 435).

A complaint for mismanagement and depletion of capital by receiver of building and loan association against former directors who resigned more than three years before commencement of action was barred by limitations, where complaint contained no allegation of concealment and admitted that directors neither obtained any advantage from wrongdoing of incorporators nor intentionally did any affirmative act to cause loss of funds paid in by certificate holders. *Peyser* v. *Owen* (1940, 116 F. 2d 298, 73 App. D.C. 64).

36.50. Full faith and credit

Application of Ohio statute of limitations to administratrix' action for wrongful death of deceased in Washington, D.C., accident did not violate Full Faith and Credit Clause of federal Constitution. *G. E. Meyers, Admt'x of the estate etc.* v. *Alvey-Ferguson Co., et al.* (1964, 331 F. 2d 223, U.S. App. Sixth Ct.).

37. Historical

The Maryland statute of limitations of 1715 "was repealed or superseded by the District Code." *McKay* v. *Bradley* (26 App. D.C. 449).

By the enactment of this section, §§ 1 and 2 of the statute of James (21 James I, ch. 16), were repealed, and new periods of limitations substituted therefor. *Gwin* v. *Brown* (21 App. D.C. 295).

38. Husband and wife

Statute of limitations is not generally applicable to actions between husband and wife prior to divorce although the rule is not applicable under all circumstances. *R. J. Bushboom* v. *S. B. Bushboom* (D.C. Mun. App. 1962, 187 A. 2d 122).

Under evidence that husband and wife were living together intermittently and attempting to effect a reconciliation of their differences, statute of limitations did not commence to run against husband's claim that wife had wrongfully appropriated funds from a bank account at least until the final separation of the parties. *Id.*

38.50. Insurance agent

Action against insurance agent for negligence in not supplying insured with protection against liability for injuries sustained by farm employees when agent procured farmers' comprehensive personal liability policy was barred by three-year statute of limitations, where suit was not filed until four years after insured learned from insurer that it denied coverage. *P. V. Finegan* v. *Lumbermens Mutual Casualty Co., et al.* (1963, 329 F. 2d 231, — U.S. App. D.C.—).

39. Judgment

Part payment of judgment debt within statutory period of limitations will not avoid the operation of the statute when it is pleaded to a scire facias to revive the judgment, or in action of debt on the judgment. *Mann* v. *Cooper* (2 App. D.C. 226).

40. —— On pleadings

Where action on notes pleaded agreement by maker waiving defense of limitations in consideration of withholding action on notes until date when action on notes would otherwise have been barred by limitations and action was not brought within three years after date agreed upon, and maker answered setting up defense that action had not been brought within three years after date agreed upon, the matter was properly disposed of on motion for judgment on the pleadings. *Noel* v. *Baskin* (1942, 131 F. 2d 231, 76 U.S. App. D.C. 332).

41. Letters of administration

When parent agrees to compensate in his will for daughter's services, but no provision is made, she has an action against the administrator and the claim will not be barred by limitations until after the lapse of statutory period after administration is granted. *Tuohy* v. *Trail* (19 App. D.C. 79).

42. Libel

The "single publication rule" is applicable in a libel action in the District of Columbia, and therefore libel action in the District of Columbia was barred by one-year statute of limitations governing actions for libel in the District of Columbia where book containing the alleged libelous matter was published in November, 1955, and action was not brought until June 25, 1959, though there were subsequent individual sales of the book within the one-year period prior to the filing of the action. *Ogden* v. *Ass'n of the U.S. Army* (1959, 177 F. Supp. 498).

43. —— Counterclaim

In Congressman's action against publishers of weekly newsletter for falsely reporting that Congressman had sponsored a "Communist Front", counterclaim, alleging that in letter dated August 29, 1957, "and on numerous occasions subsequent thereto", plaintiff had caused publication and republication of allegedly defamatory statement that defendant had been employed by one organization to dafame another, was not a recoupment", since it was based on a different transaction, and was not a "setoff" since claims were unliquidated, and "thus even if applicable District of Columbia law permitted set-off to be used defensively despite limitations statute, untimely counterclaim could not be permitted. *McGovern* v. *Martz and Washington News Syndicate* (1960, 182 F. Supp. 343).

In Congressman's action against publishers of weekly newsletter for falsely reporting that Congressman had sponsored a "Communist Front", quoted language in counterclaim alleging that a letter dated August 29, 1957, "and on numerous occasions subsequent thereto", plaintiff had caused publication and republication of allegedly defamatory statement that defendant had been employed by one organization to defame another, was mere "lawyer's throw-in", insufficient to bar dismissal pursuant to statute of limitations. *Id.*

Where defendant filed counterclaim for libel, which occurred more than one year prior thereto, statute was not tolled by the principal claim since the statute of limitations continues to run in respect of a setoff which has no relation to the principal claim. *Walker* v. *Pilkerton* (1949, 82 F. Supp. 321).

44. Loans

An action for money which had been delivered by plaintiffs to defendant as a loan payable on demand, which action was commenced more than three years after loan was made but within three years of demand, was barred by three-year limitation of this section, since the money became due at once and limitation ran from date of the loan. *Schupp* v. *Taendler* (1946, 154 F. 2d 849, 81 U.S. App. D.C. 59).

45. Mandamus

This section is not applicable to mandamus proceedings. *United States ex rel. Arant* v. *Lane* (1919, 39 S. Ct. 293, 249 U.S. 367, 63 L. Ed. 650).

46. Minors

In an action for negligence "the minor * * * has the entire period of his minority and three years thereafter within which to institute the action," and, if the action is brought within his minority, he is not confined to three years after the accrual of the right. *Carson* v. *Jackson* (1922, 281 F. 411, 52 App. D.C. 51).

The interest of adult beneficiary was barred by statute and insurance company was liable to minor beneficiaries only to the extent of their separate interests in the policy. *Kaplan* v. *Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

47. New promise or acknowledgment

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three-year statute of limitations, notwithstanding that more than three years had then lapsed since the signing of the first note. *Garfinkle* v. *Needle* (1953, 201 F. 2d 202, 91 U.S. App. D.C. 342).

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *Grass* v. *Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the securities and exchange commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such listed debts. *Id.*

A plaintiff who was pressing a claim which on its face is barred by limitations, and who claims an acknowledgment or new promise in the form of a part payment has the burden of proving such fact, and a part of that burden is to establish date of payment or new promise. *Stern Equipment Co., Inc., etc.* v. *Florine Pogue* (D.C. Mun. App. 1955, 117 A. 2d 447).

Suit for services is barred after three years from the time the action accrued, in the absence of a new promise or an acknowledgment within statutory period. *Booger* v. *Roach* (25 App. D.C. 324).

Where property covered by a mortgage bared by limitations, was devised by will, with a provision that the mortgage should be first satisfied, payee was entitled to interest not only to time of maturity of note but to time of payment. *Taylor* v. *Drury* (1926, 12 F. 2d 489, 56 App. D.C. 266).

Commissioner's direction to assessor to cancel the record of paving assessments did not constitute an acknowledgment of indebtedness which would take case out of the operation of the statute of limitations. *Lake for Use of Peyser* v. *District of Columbia* (1934, 72 F. 2d 174, 63 App. D.C. 306).

To take any case out of the operation of the statute, the acknowledgment must not be accompanied by circumstances which negative any intention or promise to pay. *Moore* v. *Snider* (1940, 109 F. 2d 840, 71 App. D.C. 293, certiorari denied 60 S. Ct. 808, 309 U.S. 685, 84 L. Ed. 1029).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan* v. *Lincoln Inv. Corp.* (1940, 110 F. 2d 130, 71 App. D.C. 365).

48. Omnibus provision

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from time when right of action accrued, is sufficiently broad to include actions to enforce federally created rights. *Cassell* v. *Taylor* (1957, 243 F. 2d 259, 100 U.S. App. D.C. 153).

49. —— Workman's compensation award

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from time when right of action accrued, barred action brought sixteen years after workman's compensation award, to enforce compensation order against plaintiff's employer. *Cassell* v. *Taylor* (1957, 243 F. 2d 259, 100 U.S. App. D.C. 153).

50. Pension benefits

Where trustees of coal industry union welfare fund had made different investigations into merits of member's pension claim and member's claim had not been completely repudiated until trustees interposed defense in member's suit to determine pension eligibility rights, action was not barred by statute of limitations. *J. Kosty* v. *J. L. Lewis et al., Trustees etc.* (1963, 319 F. 2d 744, 115 U.S. App. D.C. 343).

Three-year statute of limitations was not applicable to action by claimant for pension benefits from trust fund created by National Bituminous Coal Wage Agreement, but rather, the doctrine of laches was applicable. *A. Szuch* v. *John L. Lewis et al.* (1960, 193 F. Supp. 831).

51. Personal injuries

In a suit for personal injuries sustained as a result of three separate acts, two of which are barred by limitations, evidence of injuries sustained by any but the one act not barred is inadmissible. *Jackson* v. *Emmons* (25 App. D.C. 146, affirmed 27 S. Ct. 778, 203 U.S. 578, 51 L. Ed. 325).

52. Pleading

In action to recover land and mesne profits where defendant pleaded res judicata and limitation of this section to complaint which showed on its face that cause of action arose more than 15 years before action was instituted, if plaintiff had facts which would toll this section, he might have amended his complaint, served affidavits, or asked permission to reply. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

Where principal of note sued on in Municipal Court for District of Columbia was less than $500, formal pleadings were not required but defendant properly raised defense of statute of limitations by written answer. *Whitman* v. *Noel* (D.C. Mun. App. 1947, 53 A. 2d 280).

53. Questions of fact

Where affidavit submitted to motions judge presented issue of fact as to defendant's availability for service of process and as to plaintiff's diligence in effecting such service, appellate court could not, in absence of record of oral testimony produced at trial on merits, hold that there had been an abuse of discretion in trial court's failure to sustain defenses, that claim was barred by limitations or by failure to prosecute, when such defenses were raised by motion to dismiss and at trial on merits. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

54. Recovery of personal property

Limitations do not apply to attachment for recovery of property seized by alien property custodian. *Sprunt* v. *Direction Der Disconto Gesellschaft* (1933, 63 F. 2d 127, 61 App. D.C. 350, certiorari denied 53 S. Ct. 526, 289 U.S. 730, 77 L. Ed. 1479).

55. —— Possession of land

"An action against the commissioners to compel the execution and delivery of a tax deed is not one for the recovery of the possession of land" and does not come within the 15-year limitation, but within the omnibus clause of the section. *Luchs* v. *Christman* (42 App. D.C. 326).

56. Release of surety

Whether an indemnitor is discharged by the mere failure of his obligee to sue the principal debtor until suit is barred by the statute of limitations remains an open question in this court. *Chapman* v. *Hoage* (1936, 56 S. Ct. 333, 296 U.S. 526, 80 L. Ed. 370).

Where plaintiff sought to recover under wrongful death statute and, after being given leave to amend, amended complaint without indicating her intent to rely on survival statute, alleged error of District Court in dismissing her complaint seeking recovery under survival statute could not be raised for first time on appeal. *G. E. Meyers, Administratrix etc.,* v. *Alvey-Ferguson Co., et al.* (1964, 326 F. 2d 590, U.S. App. Sixth Circuit).

On appeal from judgment dismissing complaint as barred by statute of limitations, appellant's contention, made in the brief, that defense of statute of limitations should have been raised by answer rather than by motion to dismiss, would not be considered, where question was not raised in District Court and was abandoned in the oral argument. *Peyser* v. *Owen* (1941, 116 F. 2d 298, 73 App. D.C. 64).

Where order of judge denying defendant's motion to dismiss on ground that action was barred by limitations was made before default and represented adjudication of a duly contested matter, such order was properly before Municipal Court of Appeals for review. *Clark* v. *Keesee* (D.C. Mun. App. 1957, 136 A. 2d 394).

The defense that plaintiff's claim was barred by limitations made for the first time in a brief submitted to the trial judge in support of motion for new trial was too late to save the point for review. *Atchison & Keller* v. *Taylor* (D.C. Mun. App. 1947, 51 A. 2d 297).

58. Sealed instruments

Where a note was signed by a corporation by its secretary-treasurer, and corporate seal was impressed through the name of the corporation and that of the secretary-treasurer, and the instrument was on a printed stationer's form headed "Promissory Note" and nowhere did the word or symbol "Seal" or "L.S." appear, and nowhere was there a recital that the instrument was "signed and sealed," intention of maker was not to create a specialty with its attendant liability for 12 years, but the seal would be deemed impressed for identification and as a mark of genuineness, and to give certain knowledge that note was an obligation of the corporation and no one else, and therefore, an action on such note was barred after three years. *Sigler* v. *Mt. Vernon Bottling Co., Inc.* (1958, 261 F. 2d 378, 104 U.S. App. D.C. 260).

Where sealed agreement which gave plaintiffs option to purchase realty was mere evidence of debt owed by defendants to plaintiffs, and did not recite or mention indebtedness, suit to recover amount of indebtedness was not brought on option agreement, and twelve year statute of limitations applicable to suits on sealed instruments was inapplicable and did not extend time within which suit might be brought beyond that for bringing of ordinary contract actions. *Filson* v. *Fountain* (1962, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Where parent British organization signed patent licensing agreement containing introductory clause stating that contract was made by such parent organization for itself and specified British subsidiaries as *"Party* of the One Part" and an American corporation and its American subsidiaries as *"Parties* of the Other Part", British subsidiary, on whose behalf parent British organization had authority to sign, was party to such agreement; and such agreement being under seal, an action by parent British organization and its subsidiary against parent American corporation, for use of patented inventions of the subsidiary British firm, was subject to 12 year statute governing actions on contracts under seal. *Smiths America Corp. et al.* v. *Bendix Aviation Corp.* (1956, 140 F. Supp. 46, affirmed 248 F. 2d 621, 101 U.S. App. D.C. 299).

Twelve-year limitation statute applying to action on contract under seal was applicable to suit brought by physician against medical service corporation for services rendered more than three years before suit was brought but less than twelve years, and not three-year limitation statute applicable to simple contracts, where contract, which was on printed form prepared by corporation, recited that parties affixed their seals thereto, and physician executed contract under seal, and corporation thereafter executed contract without impressing its corporate seal thereon. *R. J. McNulty, M. D.* v. *Medical Service of District of Columbia, Inc.* (D.C. Mun. App. 1962, 176 A. 2d 783).

59. Statutory penalty or forfeiture

Liability of principal and sureties on bond given by a contractor with District of Columbia, providing that such bond shall be the "usual penal bond" conditioned upon contractor paying expenses for materials and labor, is not a statutory penalty in the proper legal sense as to come within one-year statute of limitations within meaning of section 1265 of the 1901 Code (this section). *Pavarini* v. *Title Guar. & S. Co.* (36 App. D.C. 348, Ann. Cas. 1912c, 367).

Revocation of license to practice medicine is in the nature of a remedial measure for the protection of the public, and not a penalty or forfeiture, but as less than three years intervened between final judgment of conviction and institution of this proceeding, it is unnecessary to consider the application of the general three-year statute of limitations. *Kemp.* v. *Medical Supervisors* (46 App. D.C. 173).

A proceeding to revoke physician's license who had been convicted of crime involving moral turpitude was not barred by act of Congress of June 3, 1896, 29 Stat. 198, ch. 313, when proceeding is instituted more than two years after affirmance of conviction; and it was not barred by § 1265 of the 1901 Code (this section) which provides for one-year period after cause of action accrued; nor was it barred by the fact that more than three years elapsed between conviction in trial court and proceeding by supervisors. *Id.*

60. Summary judgment

In action to recover land and mesne profits where complaint showed on its face that it arose more than 15 years before institution of the action, "issues of material fact" were not presented, within rule 56 of Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, authorizing summary judgment in absence of issues of material fact, because there might possibly be facts which would toll this section and avoid defendants' plea of res judicata, where plaintiff alleged no such facts and raised no such issues. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their claims on two notes was induced by representations or

promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *Grass* v. *Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

That creditor under an agreement for sale of goods on a 60-day credit basis demanded payment less than 60 days after some of the sales were made, though more than 60 days after others, did not establish that the meaning of the credit terms was a disputed question of fact precluding summary judgment. *Curtis Brothers, Inc.* v. *Thomasville Chair Co.* (1961, 289 F. 2d 461, 110 U.S. App. D.C. 84).

Where earliest sales were made on October 5, 1956, under an agreement providing for 60 days credit, no suit could have been brought before December 4, 1956, and suit brought December 2, 1959, was within the three-year statute of limitations. *Id.*

61. Tolling or suspension of period

Provisions suspending running of statute of limitations while defendant who is resident of District of Columbia is out of District had no application to defendant who first moved to District in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and such action was barred by three-year statute of limitations. *Adams* v. *Frank* (1954, 213 F. 2d 198, 94 U.S. App. D.C. 174).

Payments made after life tenant's death tolled the three-year statute under § 1265 of the 1901 Code (this section) as to bringing suit against trustee's executor. *National Sav. & Trust Co.* v. *Ryan* (1920, 262 F. 613, 49 App. D.C. 159).

Where university architect was appointed agent of university land extension committee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, the fact that the agent was later requested by auditors to verify several items did not prolong period of limitations under this section on claim of architect who was under no obligation to assist auditors checking his report. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 7149, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committtee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, activities of the agent subsequent to the submission of his report did not prolong the three-year period of limitations on his claim against university for services, and action instituted on June 4, 1936, was barred, where agent did not seek compensation for, and did not ask for reimbursement for expenses. *Id.*

In District of Columbia, statute of limitations is tolled when bill or declaration is filed and subpoena issued and delivered to marshal for service before statute has run. *Bowles* v. *Dixie Cab Ass'n et al.* (1953, 113 F. Supp. 324).

An owner's mere lack of knowledge of injury to his property will not prevent statute of limitations from running. *Maddox* v. *Andy's Refrigeration & Motor Service Co., Inc.* (D.C. Mun. App. 1960, 160 A. 2d 799).

Provision suspending running of statute of limitations while defendant who is resident of District of Columbia is out of the district, had no application to defendant who first moved to district in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and action was barred by three year statute of limitations. *Frank* v. *Adams* (D.C. Mun. App. 1953, 98 A. 2d 789).

To toll statute of limitations, no more is ever required than filing of declaration or complaint and issuance of summons within statutory period, followed by diligence in service of summons and prosecution of suit. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

To toll statute of limitations in regard to breach of implied warranty to do work in workmanlike manner, there would have to be some trick or connivance intended to exclude suspicion and prevent discovery of cause of action by use of ordinary diligence. *Poole* v. *Terminix Co. of Maryland & Washington* (D.C. Mun. App. 1952, 84 A. 2d 699).

Concealment, by mere silence, of breach of impiled warranty to do work in workmanlike manner would not be sufficient to toll statutes of limitations. *Id.*

When a declaration is filed, with directions, either express or implied, given by the person on whose behalf it is filed, or by his attorney, to the clerk to issue the proper process thereon and nothing then remains to be done but that the clerk should proceed, and the party has otherwise complied with the requirements of law, if other requirements there be, such as payment of necessary fees, the suit must be deemed to be then commenced so far as to arrest the application of the statute of limitations. *Huysman* v. *Evening Star* (12 App. D.C. 586).

There is nothing in the language of acts of incorporation to prevent the running of the statute of limitations in favor of claimant against the company, to a portion of a public highway. *Columbia* v. *Krause* (11 App. D.C. 398).

Statute of limitations against claim of set-off is not stopped by action in which set-off is pleaded, unless set-off has some connection to the principal claim, but it continues to run until filing of such plea. *Durant* v. *Murdock* (3 App. D.C. 114).

62. —— Imprisonment

Where fraud allegedly occurred in 1944 and was discovered in 1948, that plaintiff, who filed suit in 1949, was allegedly in prison, although he was present at court, at time this action came to trial in 1953 and plaintiff obtained dismissal did not invoke statute tolling limitations where plaintiff is imprisoned at time of accruing of right of action, and subsequent action was barred. *Frey* v. *Davis* (1956, 229 F. 2d 774, 97 U.S. App. D.C. 200).

The fact that plaintiff was held to bail and remained under bond did not stop the running of the statute of limitations against his civil action for libel. *Rose* v. *Washington Times Co.* (1885, 23 F. 993, 57 App. D.C. 385, certiorari denied 48 S. Ct. 559, 277 U.S. 597, 72 L. Ed. 1006).

63. —— Military service

Where cause of action accrued on December 8, 1948, and defendant was called to active duty as member of Organized Naval Reserves on July 28, 1950, and continued on duty for 15 months and two days, three-year statute of limitations was tolled, and time within which the action could be commenced was extended, for period of such military service, and action filed before March 11, 1953, was timely. *Bowles* v. *Dixie Cab Ass'n et al.* (1953, 113 F. Supp. 324).

64. Tort actions

Complaint, which alleged that attorney for judgment creditor and employee of judgment creditor caused issuance of writ of attachment resulting in seizure of plaintiff's moneys in a bank notwithstanding knowledge that judgment had been satisfied, and that they did so maliciously, alleged a tort of malicious prosecution which was subject to one year statute of limitations. *Morfessis* v. *Baum* (1960, 281 F. 2d 938, — U.S. App. D.C. —).

Where plaintiff sued a Maryland Corporation, solely owned by the U.S. and having the power to be sued in the District in tort actions for negligence, the action was not barred by the general statute of limitations. *Hood* v. *Defense Homes Corp.* (1949, 83 F. Supp. 365).

65. Trusts

Even if defendant, to whom two promissory notes had been delivered for collection, had been trustee of funds collected, where plaintiff's demand for the proceeds collected had been denied in May, 1947, the trust was thereby terminated and plaintiff's suit in February,

1952, was subject to and barred by three-year statute of limitations. *Calvin* v. *Rafferty* (1954, 214 F. 2d 230, 94 U.S. App. D.C. 60).

Claim for enforcement of certain interest in realty pursuant to alleged resulting trust, if not purely legal was within concurrent jurisdiction of law and equity, and statute of limitations was applicable. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Where an action at law was barred by the statute, appellant can not avoid this conclusion by describing the misappropriated money as a trust fund, for equity follows the law in such cases and the limitation would be enforced. *Moran* v. *Schlosberg* (1937, 90 F. 2d 408, 67 App. D.C. 163).

66. Unemployment contributions

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Construction Company* v. *McLaughlin et al., etc.* (D.C. Mun App. 1959, 151 A. 2d 535).

67. Use and occupancy

The three-year limitation statute applied to divorced wife's claim against divorced husband for his use of her realty after date of divorce. *Curles* v. *Curles* (1957, 241 F. 2d 448, 100 U.S. App. D.C. 43).

68. Usury—Cancellation for

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by usury statute of limitations, § 28–2704, or this section. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

69. ⟵ Defense

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

70. Waiver

Where parties agreed that court should first decide whether claim was barred by limitation, and neither party intended to waive merits of controversy, defenses other than bar by limitation were not waived. *R. J. McNulty, M.D.* v. *Medical Service of the D.C. Inc.* (D.C App 1963, 189 A. 2d 125).

Unless a waiver of the statute of limitations is specifically stated to be perpetual, it should be held to operate only for a reasonable time. *Munter, Sole Liquidation Trustee, etc.* v. *Lankford* (1956, 232 F. 2d 373, 98 U.S. App. D.C. 116).

Though two-year note, executed in 1935, to order of estate of certain person, contained recital of waiver of statute of limitations, action on note in 1953 was barred by statute of limitations, in view of rule that such waiver operates only to extend limitation for a reasonable time, which in such case would have been for not longer than one extra three-year limitation period. *Id.*

§ 12–302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

(1) under 21 years of age; or

(2) noncompos mentis; or

(3) imprisoned—

he or his proper representative may bring action within the time limited after the disability is removed.

(b) When a person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within 5 years after the disability is removed, and not thereafter. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–201 (Mar. 3, 1901, ch. 854, § 1265, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Section is based on part of section 12–201.

For remainder of that section, see tables.

Changes are made in phraseology and arrangement.

§ 12–303. Absence or concealment of defendant.

(a) When a person who is a resident of the District of Columbia is out of the District or has absconded or concealed himself at the time a cause of action accrues against him, the period limited for the bringing of the action does not begin to run until he comes into the District or while he is so absconded or concealed.

(b) When such a person absconds or conceals himself after the cause of action accrues, the time of his absence or concealment may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–205 (Mar. 3, 1901, ch. 854, § 1269, 31 Stat. 1389).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Military assignment 1
Non-residents 2
Summary judgment 3

1. Military assignment

Where complainant and defendant in paternity action had been residents of Virginia and complainant moved to District of Columbia a few months before birth of child who was born within the District and defendant was a member of armed forces who came to District of military assignment 2½ years after birth of child, under provision of this section that time within which defendant should be absent from jurisdiction should be excluded from computation of the 2-year statute of limitations, statute of limitations was tolled as to defendant who had not previously been within the jurisdiction. *District of Columbia* v. *Franklin* (D.C. Mun. App. 1959, 154 A. 2d 550).

2. Non-residents

Provisions suspending running of statute of limitations while defendant who is resident of District of Columbia is out of District had no application to defendant who first moved to District in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and such action was barred by three-year statute of limitations. *Adams* v. *Frank* (1954, 213 F. 2d 198, 94 U.S. App. D.C. 174).

This section suspending running of statute of limitations while defendant who is resident of District is out of it, has no application to non-resident defendants. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

3. Summary judgment

Where defendants in action in the District of Columbia urged that plaintiff's claims for sums expended by plaintiff in connection with realty and for services were barred by limitations, and plaintiff contended that absence of some of the defendants from the District of Columbia tolled statute of limitations, and plaintiff thereby raised issue of defendants having been residents of District of Columbia when causes of action accrued with subsequent absence from District of Columbia, summary judgment for defendants was precluded, since there was a genuine issue of fact material to decision on question of limitations. *Calvin* v. *Calvin et al.* (1954, 214 F. 2d 226, 94 U.S. App. D.C. 42).

§ 12–304. Actions stayed by court or statute.

When the bringing of an action is stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of the stay may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–206 (Mar. 3, 1901, ch. 854, § 1270, 31 Stat. 1389).

Changes are made in phraseology.

§ 12–305. Actions against decedents' estates.

In an action against the estate of a deceased person, the interval, not exceeding two years, between the death of the deceased and the granting of letters testamentary or of administration may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–202 (Mar. 3, 1901, ch. 854, § 1266, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Changes are made in phraseology.

CROSS REFERENCE

Claims against estate, see § 18–518.

NOTES TO DECISIONS UNDER PRIOR LAW

Domestic judgments 1
Maintenance of insane person 2
Proving claim against estate 3

1. Domestic judgments

This section does not cut down the periods specifically prescribed for actions on domestic judgments. *Miller* v. *Miller* (1941, 122 F. 2d 209, 74 App. D.C. 216).

2. Maintenance of insane person

The estate of a patient committed to St. Elizabeth's Hospital while a resident of the District of Columbia is liable to the District for his maintenance, and statute of limitations does not run against the District in its claim for such maintenance. *Hart* v. *Commissioners of District of Columbia* (App. D.C. 1946, 155 F. 2d 877).

3. Proving claim against estate

Proving claim against decedent's estate under section 336 of the 1901 Code (§ 18–509), as suspending running of limitations. *Berry & Whitmore Co.* v. *Dante* (43 App. D.C. 110).

§ 12–306. Directions as to debts in a will.

A provision in the will of a testator devising his real estate, or part thereof, subject to the payment of his debts, or charging the same therewith, does not prevent the statute of limitations from operating against the debts, unless it plainly appears to be the testator's intention that it shall not so operate. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–207 (Mar. 3, 1901, ch. 854, § 1273, 31 Stat. 1390).

Changes are made in phraseology.

CROSS REFERENCES

Decedents' estates—

Filing claim as tolling limitations, see § 18–514.

Plea of limitations within discretion of executor or administrator, see § 18–515.

Sale of real estate directed in will, see § 18–604.

§ 12–307. Foreign judgments.

An action upon a judgment or decree rendered in a State, territory, commonwealth or possession of the United States or in a foreign country is barred if by the laws of that jurisdiction, the action would there be barred and the judgment or decree would be incapable of being otherwise enforced there. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–203 (Mar. 3, 1901, ch. 854, § 1267, 31 Stat., 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Bankruptcy 2
Dormant judgment 3
Effect limited 4
Enforceability 5
Equity, suits in 6
Form of action 7
Full faith and credit 8
Historical 1
Judgment of justices of peace 9
Limitations of actions 10
Proof of judgment 11
Purpose 12

1. Historical

"This section prescribes two rules of limitation. By the first, all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than ten years before the commencement of the action. On June 30, 1902, section 1267 (this section) was amended by striking therefrom the last part * * * in which the second rule aforesaid is embodied." *McKay* v. *Bradley* (26 App. D.C. 449).

2. Bankruptcy

That judgment debtor who filed a voluntary petition in bankruptcy during pendency of suit to have lien for payment of barred California judgment charged on debtor's interest in an estate listed judgment among his scheduled liabilities without indicating its disputed character did not constitute a voluntary "acknowledgment" sufficient to remove the bar of this section against enforcement of the judgment debt. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

3. Dormant judgment

Possibility of enforcing or satisfying a judgment after a dormant judgment is revived by suit for that purpose is not contemplated by the words "otherwise enforced" or by the general purpose of this section. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Under West's Ann. Cal. C.C.P. § 635, providing that a barred judgment may be enforced or carried into execution by leave of court on motion and after due notice to judgment debtor and providing for general revival founded on supplemental proceedings, a barred judgment is "dormant" until one of those procedures is made effective, and hence a California judgment barred by West's Ann. Cal. C.C.P. §§ 335, 336, when creditor's bill was filed in the District of Columbia to have lien for payment charged on debtor's interest in an estate could not be "otherwise enforced" within this section. *Id.*

4. Effect limited

"Section 1267, as amended (this section), has no other effect than to bar an action upon a judgment of another state that is barred, at the time of the commencement of the action by the laws of that state." *McKay* v. *Bradley* (26 App. D.C. 449).

5. Enforceability

"Enforceability", within this section, means a right of enforcement which exists at the time suit is begun in the District of Columbia, and not a mere possibility of enforcement in the future which depends on a further

showing of facts and a further exercise of judicial discretion. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

6. Equity, suits in

This section bars suits in equity as well as actions at law. *Fowler* v. *Pilson* (1942, 23 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

7. Form of action

Under this section the words "otherwise enforced" are used alternatively to "such action" and comprehend that the judgment need not be enforceable in its original jurisdiction in the identical manner or form of proceeding by which enforcement is sought in the District of Columbia. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

8. Full faith and credit

In this jurisdiction, an action upon a judgment of any state is barred if, by the laws of such state, the action would be barred, and the judgment would be incapable of being otherwise enforced there. *Rosenberg* v. *Ichcovitz* (D.C. Mun. App. 1950, 72 A. 2d 466).

9. Judgment of justices of peace

Valid judgments of justices of the peace of other states are enforcible in the District of Columbia provided they are properly proved. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806.

10. Limitations of actions

West's Ann. Cal. C.C.P. §§ 335, 336, prescribing periods for commencement of actions other than for the recovery of realty and requiring an action on a judgment or decree of any federal or state court to be commenced within five years after entry bar suits in equity as well as actions at law, and hence a creditors' bill filed in 1937, whereby assignee of California judgment rendered against defendant in 1930 sought to have a lien for payment of amount of judgment charged on defendant's interest in an estate, could not have been maintained in California had it been brought there when it was begun in the District of Columbia. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Where Michigan final judgment of divorce was rendered on February 14, 1950, and support payments by husband had not been made since October, 1953, wife's cause of action for debt then accrued, and such action, when commenced within six years, was not barred by Michigan statute of limitations, and further, when action was commenced in the District of Columbia within 10 years since judgment was rendered in Michigan, suit would not be barred under Michigan law and was not barred in District of Columbia. *King, etc.* v. *Fay et al.* (1959, 169 F. Supp. 934).

Where a judgment of a Maryland court was governed by the twelve-year statute of limitations of Maryland, an action brought thereon in the Municipal Court of the District within the twelve years was not barred by Maryland law and therefore not barred by the District of Columbia. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

11. Proof of judgment

Where no issue is raised regarding the jurisdiction of the justice of the peace rendering the judgment, a properly certified transcript of the docket entries showing service of process upon the defendant and jurisdiction of the subject matter is sufficient to support a judgment in another state. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

12. Purpose

This section was intended to bring about uniformity between the two jurisdictions in the time allowed for enforcing the judgment by suit and to achieve uniformity in the scope and kinds of substantive relief available. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

§ 12–308. Actions by the United States.

Sections 12–301, 12–302, 12–305, and 12–307 do not apply to an action in which the United States is the real and not merely the nominal plaintiff. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–204 (Mar. 3, 1901, ch. 854, § 1268, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally 1
Unreasonable delay 2

1. Generally

Neither this chapter nor laches applies to any action in which the United States is the real and not merely the nominal plaintiff. *U.S.* v. *Washington Loan & Trust Co.* (1942, 47 F. Supp. 25, affirmed 134 F. 2d 59, 77 U.S. App. D.C. 284)

2. Unreasonable delay

Unreasonable delay by Government in giving notice to banks as to discovery of forgery of indorsement of payees of Government checks to prejudice of banks would be a defense to action by Government against banks to extent of the loss shown by banks *U.S.* v. *Washington Loan & Trust Co.* (1942, 47 F. Supp. 25, affirmed 134 F. 2d 59, 77 U.S. App. D.C. 284)

§ 12–309. Actions against District of Columbia for unliquidated damages—Time for notice.

An action may not be maintained against the District of Columbia for unliquidated damages to person of property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Board of Commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–208 (Feb. 28, 1933, ch. 138, 47 Stat. 1370).

Changes are made in phraseology.

CROSS REFERENCE

Claims against District, see §§ 1–901 to 1–906.

Liability of District employees §§ 1–921 to 1–926.

NOTES TO DECISIONS UNDER PRIOR LAW

Actual or constructive notice 1
Compliance with provisions 2
Construction 3
Corporation counsel, persons notified 6
Correction of notice 4
District of Columbia Government persons notified 7
Engineer Department, persons notified 8
Liquidated or unliquidated damages 5
Persons notified 6—8
Corporation counsel 6
District of Columbia Government 7
Engineer Department 8
Sufficiency of
Evidence 9
Notice 10
Waiver of
Immunity 11
Notice 12
Written notice 13

1. Actual or constructive notice

The District of Columbia is not an insurer of the safety of persons from defects in its streets or sidewalks, but its liability sounds in negligence imputed from a failure to perform a duty, and in regard to performance of that duty the District must have timely notice either actual or constructive of the dangerous condition. *Jones* v. *District of Columbia* (D.C. Mun. App. 1956, 123 A. 2d 364).

2. Compliance with provisions

Under this section requiring that written notice be given to Commissioners of District of Columbia in order to maintain action against District, notice sent to corporation's counsel giving notice of injury was fatally defective. *District of Columbia* v. *Stone* (D.C. Mun. App. 1955, 112 A. 2d 497).

A notice stating that claimant fell on manhole cover on southeast corner of an intersection whereas in fact accident occurred on northeast corner did not substantially comply with this section requiring notice of place of injury and action for injuries could not be maintained. *Id.*

3. Construction

The statute, being in derogation of common law rights, is to be strictly construed; and oral notice is not sufficient to waive the requirement of the statute; and actual notice is without effect to dispense with a written notice when a statute requires notice in writing. *District of Columbia* v. *World Fire and Marine Insurance Co.* (D.C. Mun. App. 1949, 68 A. 2d 222).

4. Correction of notice

Where, in action against District of Columbia, for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia so that the manhole edge and cover protruded from the ground, inaccuracies were contained in written notice seasonably sent commissioner, and an attempt to cure such inaccuracies was made by seasonable correction conveyed to assistant in office of corporation counsel, to whom commissioners has referred original notice, and to District's inspector of claims, judgment, by which the Municipal Court of Appeals, because of such inaccuracies, reversed judgment rendered for plaintiff in the municipal court, would be reversed. *Stone* v. *District of Columbia* (1956, 237 F. 2d 28, 99 U.S. App. D.C. 32, certiorari denied 77 S. Ct. 221, 352 U.S. 934, 1 L. Ed. 160).

5. Liquidated or unliquidated damages

The notice requirement governs only where the District is sought to be held on a claim for unliquidated damages and is inapplicable to liquidated claims. *District of Columbia* v. *Hamilton National Bank* (D.C. Mun. App. 1950, 76 A. 2d 60).

6. Persons notified—Corporation counsel

In making claims against District of Columbia for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia, notice of claim was not required to be sent directly to the commissioners, and sending of an otherwise adequate notice to the corporation counsel would not make the notice ineffective. *Stone* v. *District of Columbia* (1956, 237 F. 2d 28, 99 U.S. App. D.C. 32, certiorari denied, 77 S. Ct. 221, 352 U.S. 934, 1 L. Ed. 160).

7. —— District of Columbia Government

Under this section requiring written notice within six months of accidental injury to Commissioners of District of Columbia, "District of Columbia Government" was a sufficient synonym for "Commissioners of District of Columbia" and notice to "District of Columbia Government" was sufficient and in strict, even though not precisely literal, compliance with this section. *District of Columbia* v. *Green* (1955, 223 F. 2d 312, 96 U.S. App. D.C. 20).

8. —— Engineer Department

This section requiring that written notice of injury be given within six months to commissioners of District of Columbia was sufficiently complied with where person allegedly injured by defect in sidewalk sent letter containing information to "Engineer Dept. D. of C." and thereafter furnished additional information upon request of inspector of claims, Office of Corporation Counsel, within statutory period, since information was received by proper office within proper time even though original notice was improperly directed. *Hirshfeld, Executrix, etc.* v. *District of Columbia* (1958, 254 F. 2d 774, 103 U.S. App. D.C. 71).

9. Sufficiency of evidence

In action against the District of Columbia for personal injuries resulting from fall on the sidewalk, the evidence was insufficient to take the case to the jury on the issue of whether the defect in the sidewalk had existed a sufficient time to charge the District of Columbia with notice thereof. *Jones* v. *District of Columbia* (D.C. Mun. App. 1956, 123 A. 2d 364).

10. Sufficiency of notice

Notice that pedestrian fell as result of defect in sidewalk in front of named premises was adequate though defect existed in gutter rather than sidewalk. *M. M. Dixon* v. *District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 905).

While this section requiring that written notice of time, place, cause and circumstances of injury be given to District of Columbia commissioners before action can be maintained against District is mandatory, precise exactness in notice is not essential and reasonable compliance with this section so that District is not misled to its prejudice by any defects of description of place accident happens is sufficient. *Hurd* v. *District of Columbia* (D.C. Mun. App. 1954, 106 A. 2d 702).

11. Waiver of immunity

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Adams* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 765).

12. Waiver of notice

Alleged failure of a claimant against the District of Columbia, to give District notice in writing, is a matter of affirmative defense, and not a matter which must be alleged and proved, and where alleged noncompliance with this section was not mentioned by the District in its answer, or at pretrial, such defense would be considered waived. *F. W. Woolworth Co., Inc.* v. *Stoddard* (D.C. Mun. App. 1959, 156 A. 2d 229).

13. Written notice

Under this section providing that no action shall be maintained against District unless claimant, within six months after injury, gives commissioners written notice of approximate time, place, cause and circumstances of injury, claimant who, within six months, gave commissioners writen notice, but orally advised assistant corporation counsel that location there stated was incorrect and orally gave correct location, did not comply, and could not maintain action. *McDonald* v. *The Government of the District of Columbia* (1955, 221 F. 2d 860, 95 U.S. App. D.C. 305).

The requirements of the statute as to written notice are mandatory and for failure to give such written notice, an action could not be maintained. *District of Columbia* v. *World Fire and Marine Insurance Co.* (D.C. Mun. App. 1949, 68 A. 2d 222).

TITLE 13.—PROCEDURE GENERALLY

DISTRIBUTION TABLE

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Chapter 1.—RULES OF PROCEDURE

Sec.
13–101. Prescription of rules by courts.

§ 13–101. Prescription of rules by courts.

(a) The District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, and the Juvenile Court of the District of Columbia, respectively, shall prescribe rules to provide for the forms of process, writs, pleadings, motions, and practice and procedure in those courts, to provide for efficient administration of justice. Except as otherwise provided by this section, the rules, in the case of the District of Columbia Court of Appeals and the civil division of the Court of General Sessions, shall conform as nearly as may be practicable to the forms, practice, and procedure prescribed by the Federal Rules of Civil Procedure, and, in the case of the Juvenile Court, the rules shall be enforced and construed beneficially for the remedial purposes embraced in chapter 15 of Title 11 and subchapter I of chapter 23 of Title 16.

(b) The judges of the Domestic Relations Branch of the Court of General Sessions, with the approval of the chief judge of the court, shall prescribe, by rules, the forms of process, writs, pleadings, motions, and practice and procedure in that Branch. Except as otherwise specifically provided by the rules prescribed, the applicable rules of the Federal Rules of Civil Procedure shall govern in the Branch.

(c) The Court of General Sessions shall prescribe rules to provide for a simple, inexpensive, and speedy procedure in the Small Claims and Conciliation Branch of that court to effectuate the purposes of chapter 39 of Title 16, and may prescribe, modify, and improve the forms to be used therein, from time to time, to insure the proper administration of justice and to accomplish the purposes of chapter 39 of Title 16.

(d) Rules adopted pursuant to this section by the District of Columbia Court of Appeals, the Court of General Sessions, and the Domestic Relations Branch of the Court of General Sessions may not abridge, enlarge, or modify the substantive rights of a litigant. (Dec. 23, 1963, 77 Stat. 512, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–766, 11–771a, 11–774, 11–815, 11–930 (Mar. 19, 1906, ch. 960, § 29, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Mar. 5, 1938, ch. 43, § 15, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 9, 56 Stat. 192, 193, 196; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Apr. 11, 1956, ch. 110, 70 Stat. 113; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 6, 77 Stat. 77, 78).

Section consolidates subsec. (b) of section 11–756, part of section 11–766, the first paragraph of subsec. (a) of section 11–774, section 11–815, and part of section 11–930, of D.C. Code, 1961 ed. For remainder of sections 11–756, 11–766, 11–774, and 11–930, see tables.

Sections 11–751a, 11–755, and 11–771a of D.C. Code, 1961 ed., are also cited as sources of this section, as (1) section 11–751a, enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia (which had been formed from the merger, by the Act of Apr. 1, 1942, ch. 207, of the first Municipal Court with the Police Court) to the District of Columbia Court of General Sessions, (2) part of the first sentence of subsec. (a) of section 11–755, as amended by the Act of Oct. 23, 1962, continued both the Domestic Relations Branch and the Small Claims and Conciliation Branch (which had been established within the second Municipal Court by sections 11–758 and 11–801, respectively, of D.C. Code, 1961 ed.) within the Court of General Sessions, and (3) section 11–771a, also enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The identical provisions in section 11–756(b) and 11–774(a) of D. C. Code, 1961 ed., that, after September 16, 1938 (which was the date of adoption of the Federal Rules of Civil Procedure), all laws in conflict with the rules shall be of no further force or effect, are omitted as unnecessary, in view of the reconciliation or omission, in this revised Part, of statutes heretofore in conflict with rules adopted by the Municipal Court of Appeals and the Municipal Court (now, District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively).

Section 11–756(b) of D.C. Code, 1961 ed., which related to the Municipal Court (now, Court of General Sessions), contained the following proviso: "That nothing in this section shall be construed to require any change in the existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia [that is, the Municipal Court as it existed prior to its merger with the Police Court in 1942]; nor shall this subchapter and subchapter III [effecting the merger of the two courts, and creating the Municipal Court of Appeals, now, District of Columbia Court of Appeals] or any section thereof in any way repeal or modify the provisions of sections 11–801 to 11–820 [of the D.C. Code, 1961 ed.], establishing said small claims and conciliation branch". This proviso is omitted as no longer necessary. The separate provision (D.C. Code, 1961 ed., § 11–815) directing the prescription of separate rules for the Small Claims and Conciliation Branch of the Court of General Sessions is carried into this section, and the other provisions of section 11–801 et seq., of D.C. Code, 1961 ed., that related to the Small Claims and Conciliation Branch are also carried into this revised Part. Upon reenactment herein, they will stand on an equal basis.

Changes are made in phraseology.

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1. In general

Provision in rules of American Arbitration Association that award should be executed in accordance with law did not require its arbitrators to make findings or conclusions of law as provided in statutory arbitration proceedings. *Hale* v. *Friedman* (C.A.D.C. 1960, 281 F. 2d 635).

The procedure in Small Claims Branch of District of Columbia Municipal Court is of simplified nature and strict rules of pleading and practice do not apply. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

When two persons are joined as defendants upon contract, but the proof shows liability of one only, a judgment may be taken against the one liable. *Presbrey* v. *Thomas* (1 App. D.C. 171).

When two joint contractors were joined in the same action, the entry of judgment against one does not bar the action against the other. *Harris* v. *Leonhardt* (2 App. D.C. 318).

Maker and endorsers of a promissory note may properly be joined, by the holder, as defendants, and under R.S., D.C., § 827 relating to suits against joint obligors, separate judgments may be rendered against them. *Young* v. *Warner* (6 App. D.C. 433).

When contract is made with several persons, whether it is under seal or not, if their legal interest is joint, they must, if living, all join in an action on the contract, and if all have not joined in the judgment will be arrested. *Magruder* v. *Belt* (7 App. D.C. 303).

In a suit against all the joint obligors on a joint and several bond, after judgment has been taken against one by confession, the suit may be continued against the others and there can be no difference between taking judgment by confession and taking judgment by default. *Blagden* v. *United States ex rel. Preinkert* (18 App. D.C. 370).

2. Action equitable

A divorce proceeding in this jurisdiction is equitable in character. *Moncure* v. *Moncure* (1922, 278 F. 1005, 51 App. D.C. 292).

3. Alternative theories

Remarks by plaintiff's counsel during opening statements were too ambiguous to show abandonment by plaintiff of pleaded alternative theories for setting aside of trust created by plaintiff's wife nine months before her death, and therefore trial court erred in limiting its consideration to single theory. *M. Edelman, etc.* v. *National Bank of Washington et al.* (1961, 297 F. 2d 188, 111 U.S. App. D.C. 346).

4. Amendment of complaint

Where husband sued wife for absolute divorce on ground of voluntary separation but evidence pointed to constructive desertion on part of wife and uncontradicted evidence seemed to justify divorce for desertion, husband was entitled to amend complaint to conform to evidence showing desertion. *Slone* v. *Slone* (D.C. Mun. App. 1957, 134 A. 2d 585).

5. Application to amend

Appellant was without right to complain that order sustaining motion to dismiss complaint did not allow him opportunity to amend where he made no application for leave to amend, since reviewing court cannot assume that he would have been denied the right of amendment had he sought it. *Johnson* v. *M. J. Uline Co.* (D.C. Mun. App. 1945, 40 A. 2d 260).

6. Award as condition precedent

An award by arbitration is not a condition precedent to be proved before bringing suit. *Fontano* v. *Robbins* (18 App. D.C. 402).

7. Bill of discovery

Bill in equity for discovery is not proper, merely because books, papers, and documents are in possession of defendant, as such evidence can be obtained by legal process. *Curriden* v. *Middleton* (37 App. D.C. 568, affirmed 34 S. Ct. 458, 232 U.S. 633, 58 L. Ed. 765).

Where joint tenant applied for equitable relief, the proper procedure was to file bill of discovery rather than motion to produce books and records. *Arms & Drury, Inc.* v. *Burg* (1937, 90 F. 2d 400, 67 App. D.C. 155).

8. Bill of particulars part of declaration

Although a declaration may be defective and not a model of good pleading, a bill of particulars is part thereof and may serve to remove any uncertainty inherent in the latter. *Finney* v. *Pennsylvania Iron Works Co.* (22 App. D.C. 476).

9. Burden of proof

In replevin to recover household goods which plaintiff claimed defendant had bought for plaintiff with his money and which defendant claimed to have bought with her own money, burden of proof upon such issue was upon plaintiff, and, if no evidence was produced on either side, plaintiff would have been out of court. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

In replevin to recover household goods which defendant claimed as a gift from plaintiff and which, it was not disputed, had originally been plaintiff's property, defendant had burden of establishing a gift of such goods.

10. Circuit Courts of Appeals

Writs of mandamus may still be issued by Circuit Courts of Appeals. *National Bondholders Corp.* v. *McClintic* (C.C.A. 4, 1938, 99 F. 2d 595). See, also *Armour & Co.* v. *Kloeb* (C.C.A. 6, 1940, 109 F. 2d 72, reversed on the grounds 61 S. Ct. 213, 311 U.S. 199, 85 L. Ed. 124).

11. Common-law rule

Quaere: Whether this section modifies common-law rule that "the finding in favor of the plaintiff of an issue of fact raised by a plea in abatement, entitles the plaintiff to a judgment on the merits." *Brown* v. *Savings Bank* (28 App. D.C. 351).

12. Complaint

Even if a complaint which contained a recitation as to removal of assets so that it might serve as an affidavit for a writ of attachment before judgment was insufficient because it was sworn to on knowledge and belief instead of in a positive and unqualified manner, court would not be deemed to have erred in denying a motion to quash the writ issued pursuant thereto, in view of fact that a supplemental affidavit was before the court at the hearing on the motion, and such supplemental affidavit could be deemed to have cured alleged irregularity in the complaint. *Hartz* v. *Segner et ano.* (D.C. Mun. App. 1960, 165 A. 2d 489).

Where complaint sought recovery of possession under § 5 of District Rent Act by reason of "substantial altering and remodeling and replacement with new construction of commercial property," no reversible error was committed in allowing an amendment to change body of complaint under a permissive statute where the original complaint stated that the property was "commercial property", since statement that possession was sought under § 5 which applies only to housing accommodations was mere surplusage. *Alpert* v. *Wolf* (D.C. Mun. App. 1950, 73 A. 2d 525).

Where original complaint described the plaintiff as executrix, it was not reversible error to permit amendment describing her as suing individually and as executrix, where the record was clear that it was the intention to sue in her individual capacity. As descriptive word "executrix" in the amended complaint was surplusage. *Id.*

13. Conciliation

Small Claims Rule 14c prescribing conciliation procedure in every case has the force and effect of law. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

14. Conforming to proof by amendment

Where bailor moved to amend her complaint against bailee for loss of and damage to property stored in bailee's warehouse under storage contract containing limitation of liability, to include allegation charging bailee with gross negligence, after testimony of bailee's witnesses revealed to bailor for first time manner in which bailee conducted its business, and court deferred action on motion until conclusion of case, when bailor renewed her motion and court denied it without prejudice to bailor raising issue by prayer for instruction, court in effect permitted complaint to be amended to conform to proof, and granting of amendment was proper. *Manhattan Storage & Transfer Co., Inc.* v. *Davis et al.* (D.C. Mun. App. 1955, 117 A. 2d 120).

15. Consolidation

Consolidation of two actions for trial does not combine them into one cause of action or effect a true consolidation where one judgment would be decisive against all parties to both actions. *Gibson* v. *Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

16. Costs

Where it was held that party attempting to appeal had no right to do so and judgment was affirmed, cost of stenographic record included in record on appeal could not be taxed against appellant by Municipal Court of Appeals, but could only be taxed by trial court. *Klein* v. *Liss* (D.C. Mun. App. 1945, 43 A. 2d 757).

Successful appellant was not entitled to tax against appellee the cost of a reporter's transcript of testimony which was made part of the record on appeal. *Fraser* v. *Crounse* (D.C. Mun. App. 1946, 47 A. 2d 96).

In prescribing in rule 41(c) that, on reversal, cost of transcript of record shall be taxable as costs, the usual transcript on appeal, consisting of copies of pleadings and statement of proceedings and evidence which is ordinarily prepared by counsel and settled and approved by trial judge, was contemplated and not the unusual items of expense such as the cost of a reporter's transcript. *Id.*

17. Counsel fees

Defendant, who was successful in having bill of interpleader dismissed, was not entitled to allowance of counsel fees, where ground on which such defendant claimed to be entitled to allowance of counsel fees was not apparent. *Continental Trust Co.* v. *Corbin* (D.C. Supp. 1948, 80 F. Supp. 394)

18. Counterclaims

Court should not have entertained the counterclaims of defendants in suit in which possession was sought on the grounds of unlawful entry and detainer for though the court has held that where a tenant is sued for possession for nonpayment of rent, he may defend by an equitable defense sufficient to defeat the claim for rent or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action. Yet where the suit was not for payment and the counterclaim sounded in tort, the rule does not apply. *Bellmore* v. *Baum* (D.C. Mun. App. 1949, 68 A. 2d 588).

19. Discontinuance of count

A discontinuance of a count in a declaration setting up a distinct cause of action is not an amendment, but treating it as such, it creates no necessity for a continuance. *Crandall* v. *Lynch* (20 App. D.C. 73).

20. Discretion of court

"There is nothing in section 399 of the Code (this section) to make it mandatory on the courts to allow amendments." *Schrot* v. *Schoenfeld* (23 App. D.C. 421).

"The grant or refusal of leave to amend is a power entrusted to the trial court that injustice and hardship may be prevented and the merits of the case fairly tried. Whether in the particular instance the leave should be granted or refused is a matter within the discretion of the trial court, and is not reviewable in the appellate court." *Chunn* v. *City & S. R. Co.* (23 App. D.C. 551, reversed on other grounds 28 S. Ct. 63, 207 U.S. 302, 52 L. Ed. 219). See, also, *German Soc.* v. *Prospect Hill Cemetery* (2 App. D.C. 310); *Brown* v. *Baltimore & O. R. Co.* (6 App. D.C. 237); *Plummer* v. *Johnson* (D.C. Mun. App. 1944, 35 A. 2d 647).

"After the appearance of defendant, the granting of additional time to plead and leave to amend affidavits was within the discretion of the court." *Armour* v. *Flook* (44 App. D.C. 415).

Where defendent filed an additional plea of equitable estoppel to which plaintiff demurred, the granting of leave to file a substituted amended plea within a few days thereafter was within the court's discretion. *Daly* v. *Sacks* (1930, 38 F. 2d 388, 59 App. D.C. 216).

Under this section an amendment of a plea, after the jury was sworn, but before the statement of the case or the admission of evidence, is in the discretion of the court. *Kinchlow* v. *Peoples Rapid Transit Co.* (1937, 88 F. 2d 764, 66 App. D.C. 382, certiorari denied 57 S. Ct. 926, 301 U.S. 693, 81 L. Ed. 1349).

A reasonable discretion is reposed in trial courts in the allowance or refusal of amendments to pleadings. *Plummer* v. *Johnson* (D.C. Mun. App. 1944, 35 A. 2d 647).

Where action on renewal note more than eight months before trial had been at issue under answer containing a general denial and affidavit of defense alleging absence of consideration, and defendant during his testimony asked leave to amend answer to show fraud and undue influence in making the original note, but offered no excuse for not seeking the desired amendment prior to trial, trial court did not abuse its discretion in refusing amendment. *Id.*

The trial court has wide discretion in the allowance of amendments to pleadings both before and during trial. *Peake* v. *Ramsey* (D.C. Mun. App. 1945, 43 A. 2d 763).

It was not an abuse of discretion for trial court to refuse moving party leave to amend after verdict where she knew or should have known what the pending litigation would probably develop and having lost on one defense, she had no right to have case reopened to assert a new one. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

Court rules were designed to allow amendments and changes in pleadings liberally; pleadings are to be liberally construed to do substantial justice and the trial court is allowed wide discretion in determining such matters *Pyramid National Van Lines, Inc.* v. *Goetze* (D.C. Mun. App. 1949, 66 A. 2d 693).

Where a motion was made to strike out counterclaims on grounds of omission from the original answer and

allegedly filed too late, it was held that since the counterclaims were compulsory, they should not be stricken and the amendments should be allowed with great liberality at any stage unless they prejudiced the rights of the opposing party. *Id.*

It was entirely proper for trial court to permit amendment of bill of particulars since the allowance of amendments to conform to the evidence is in accordance with modern practice and is specifically authorized by the court rules. *Hillyard* v. *Smither & Mayton, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 166).

While the rules of the court contemplate that leave to amend shall be freely given, it is not their purpose to allow amendments under any and all circumstances. *Buchanan* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

Where, in action for breach of contract, case was tried on issues presented by the original complaint, amendment advancing a new theory for recovery after evidence was closed would not be permitted where it would prejudice defendant. *Id.*

21. Dismissal

Where each plaintiff sought recovery of $50 on theory that each had delivered $50 to defendant on his undertaking to acquire title to an apartment house, and that defendant's resale of apartment house obligated him to return the sums received from plaintiffs, dismissal of the action by small claims branch of Municipal Court without hearing defendant's testimony was not justified by record. *Hodgkins* v. *Beckner* (1943, 32 A. 2d 113).

Summary dismissals in the small claims branch of Municipal Court without a full hearing from both sides are not justified save in exceptional cases. *Id.*

22. Duty of appellant

The primary responsibility for prosecuting an appeal rests upon an appellant and he must guard against time lapses which may result in dismissal. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623).

It is duty of the parties and primarily of appellant to present a record complete and adequate for purposes of all questions to be argued on appeal. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

In the absence of a statute or rule requiring the giving of notice of trial, a party litigant who has appeared in court is required to keep himself informed of the time his case is set for trial. An allegation of fraud in obtaining judgment based on lack of notice is without merit. *Rosenberg* v. *Ichcovitz* (D.C. Mun. App. 1950, 72 A. 2d 466).

23. Duty of court

In a case tried by the court without a jury, the court has the duty to rule upon requested and pertinent questions of law. *Eggleton* v. *Vaughn* (D.C. Mun. App. 1946, 45 A. 2d 362).

Errors in prayer of complaint do not affect cause of action disclosed by facts alleged, but court must give any relief which those facts will support. *Smith* v. *Schlein* (1944, 144 F. 2d 257, 79 U.S. App. D.C. 166).

24. Extension of time

The taking of an appeal within the time prescribed by rule is mandatory and jurisdictional, and such time cannot be enlarged. *Valentine* v. *Real Estate Commission etc.* (D.C. Mun. App. 1960, 163 A. 2d 554).

An appeal to Municipal Court of Appeals for District of Columbia is perfected by filing a notice of appeal with clerk, and time therefor may not be extended and thereafter trial court has no power to grant extensions except one ten-day extension for filing statement of proceedings and evidence or reporter's transcript and one extension of five days for filing objections thereto, and other extensions must be obtained from Court of Appeals. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 34 A. 2d 33).

Where Municipal Court without authority extended for five days time for hearing appellee's objections to reporter's transcript because of absence from city of appellee's counsel, and transcript was thereafter approved, Court of Appeals, in its discretion, within time for filing transcript of record on appeal, extended time for approval of transcript to include date on which it was approved. *Id.*

The prohibition against enlarging time for taking appeal is absolute. *Crowley* v. *Wood* (1943, 31 A. 2d 861).

Counsel could not by their consent to application for extension of time for filing brief render inoperative court rule fixing time limit or fix new limitations of time not contemplated by court rules or specifically sanctioned by court orders. *Werth* v. *Nolan* (1943, 31 A. 2d 679).

Alleged fact that appellants' counsel had been engaged in other court work and other legal practice to such extent that he had not had sufficient time to prepare brief did not constitute sufficient cause for failure to file brief within time limited by court rules and extended by court order, and did not justify failure to seek extension of time within prescribed period and therefore an out of time application for extension of time for filing brief was required to be denied even though appellee consented to the application. *Id.*

That appellant miscalculated the time within which to file the designation of record and statement of errors was not an "extraordinary reason" for granting leave to file after the expiration of time fixed by court rule, particularly where extension was sought after expiration of the time fixed. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623).

Counsel could not by their consent to application for leave to file designation of record and statement of errors after expiration of time render inoperative court rule fixing time limit for filing, or by withholding consent prevent the court from granting relief in a proper case. *Id.*

Court's discretion in matter of permitting extension of time for filing record and statement of errors will be exercised very sparingly and only upon substantial justification. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623). See, also, *Graves* v. *MacDonald* (D.C. Mun. App. 1946, 47 A. 2d 91).

The timely filing of notice of appeal is jurisdictional and, unless such notice is timely filed, court has no power to extend or to review case. *Beach* v. *District of Columbia* (D.C. Mun. App. 1946, 44 A. 2d 926).

The purpose of Municipal Court of Appeals rule 27 (p) that there shall be no extensions of time for filing notice of appeal, reserving power in court to enlarge time for taking any step after notice of appeal is filed, is to set a definite point of time when litigation shall be at an end unless, within the time limited, an appeal is initiated in the prescribed manner. *Id.*

Appellant, filing no brief or application for extension of time to do so before last day for filing thereof, was not entitled to extension of time therefor on oral motion, made by his counsel after case was placed on next month's calendar, solely on ground that counsel had been busy with other matters. *Nash* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 469).

Tenant in landlord's action for possession of business property, was not entitled to additional time for completing appeal which was not perfected in time allegedly because pressure of business had prevented tenant's attorney from perfecting appeal, attorney was out of town, and attorney had no idea that landlord's attorney would seek enforcement of rules dealing with time limits for various steps on appeal. *Graves* v. *MacDonald* (D.C. Mun. App. 1946, 47 A. 2d 91).

The reason given in support of motion for leave to file in the trial court a statement of proceedings and evidence, time for so doing having expired, that counsel had been engaged in other courts and had overlooked the date statement of proceedings and evidence was due, was not an "extraordinary reason" within rule, which would justify granting relief. *Cunningham* v. *Dade* (D.C. Mun. App. 1947, 52 A. 2d 894).

25. Federal Rules of Civil Procedure

Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, are inapplicable to Municipal Court of Appeals for District of Columbia. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

26. Filing instrument sued on

It is not the practice, and it would be unreasonable to require, that a promissory note which is the subject of suit should be filed with the declaration; it is sufficient if it is produced at the trial or at the hearing on motion for judgment; and it will be presumed that this was done where there is nothing in the record to show the contrary. *Finney* v. *Pennsylvania Iron Works Co.* (22 App. D.C. 476).

27. Findings of fact

The Domestic Relations Branch of the Municipal Court for the District of Columbia may make findings of fact at close of a plaintiff's case. *Nadell* v. *Nadell* (D.C. Mun. App. 1957, 131, A. 2d 921).

Where trial court announced that it was accepting plaintiff's evidence as being true and correct in considering defendant's motion to dismiss at conclusion of plaintiff's evidence, making the formal findings of fact in entering final judgment of dismissal was inconsistent and required reversal for new trial. *Id.*

28. Joinder of tort and contract

A count sounding in tort may be joined with a count on contract. *Minton* v. *F. G. Smith Piano Co.* (36 App. D.C. 137, 33 L.R.A., N.S., 305).

Quaere: Whether, under this section, a count for libel may be joined with one of assault and battery. *Friedlander* v. *Rapley* (38 App. D.C. 208).

Causes of action for commission for realty sold, and for fraudulent misrepresentation as to the agency to sell property, by which plaintiff had been damaged, not an improper joining. Amended, June 30, 1902, 32 Stat. 520, ch. 1329. *Minar* v. *Sheehy* (1926, 13 F. 2d 290, 56 App. D.C. 318).

29. Joint liability

Under contract which called for members of creditor's committee of insolvent corporation to assume responsibility for payment of attorney's fee and under which members of committee were identified as promisors, each member was not bound by a separate promise to pay pro rata share but members were jointly liable for entire fee. *V. B. Welch* v. *R. W. Sherwin et al.* (1962, 300 F. 2d 716, 112 U.S. App. D.C. 124).

30. Judgment against less than all parties

In a suit against the principal and two sureties on a bond the action was discontinued as to one of the sureties. On appeal from an order overruling a motion in arrest of judgment "because the action is against but two of three joint and several obligors," and "because the action has been discontinued against one of the three joint and several obligors," and "because though one of the three joint and several obligors has died since the institution of this suit plaintiffs have failed to make his personal representative a party defendant," the court ruled: "That the action was discontinued as to Horton who it seems had become insolvent, presents no ground for arresting the judgment. Section 1211 of the code (this section) simply provides that one action may be sustained and judgment recovered against all or any joint and several obligors. It does not require that this shall be done." *Wilkinson* v. *McKimmie* (36 App. D.C. 336, affirmed 33 S. Ct. 879, 229 U.S. 590, 57 L. Ed. 1342).

31. Jurisdiction of district court

The "public policy" of the District of Columbia does not require its courts to take jurisdiction of a matrimonial dispute between two persons who are neither domiciled in the District nor even residents thereof, especially where there is no showing that the welfare of children, rights of property, or other public interests in the District are affected. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

Under the doctrine "forum non conveniens" the District Court's jurisdiction of actions for separate maintenance between nonresidents domiciled elsewhere should not be exercised unless unusual circumstances justify trial in the District of Columbia. *Id.*

The District Court properly accepted jurisdiction of a wife's action for separate maintenance, even though husband and wife were nonresidents domiciled outside the District of Columbia, where husband's work when not traveling was in the District and husband's domicile was uncertain, both parties lived a few miles away, and husband at one time lived in the District. *Id.*

Where District Court was without jurisdiction of original complaint for divorce because of lack of plaintiff's required residence, it could not entertain the cross-bill, and bill would be dismissed, with the dismissal of the original bill. *Clark* v. *Clark* (1948, 79 F. Supp. 722).

32. Material prejudice

Although it was error to strike husband's pleadings in divorce action because of his failure to appear before officer for deposition purposes concerning alimony pendente lite, where husband had been given opportunity to appear at final hearing, but husband failed to appear, husband's rights had not been materially prejudiced and limited divorce was properly granted to wife. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

33. Ministerial duty

As the Comptroller General was not charged with duties requiring the exercise of judgment or discretion, but was called upon to perform a purely ministerial function, mandamus lies to compel him to certify a voucher for refund of immigration fines which were made through error of government officers. *McCarl* v. *United States ex rel. Societa Ligure di Armamento* (1929, 30 F. 2d 561, 58 App. D.C. 319).

Mandamus is the orthodox remedy to compel the performance of a ministerial duty. *Ballou* v. *Kemp* (1937, 92 F. 2d 556, 68 App. D.C. 7).

Mandamus may compel performance of a ministerial duty or compel performance of an act involving discretion, but it cannot direct the discretion. *Thomas* v. *Vinson* (1946, 153 F. 2d 636, 80 U.S. App. D.C. 346).

Where duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command, it is regarded as being so far "ministerial" that its performance may be compelled by mandamus unless there is provision or implication to the contrary. *Id.*

34. Necessary parties

In action by purchaser against agent for return of deposit, where vendors, through their attorney, demanded the deposit from agent but purchaser did not serve vendors, presumably because they were beyond jurisdiction, and did not attempt service other than personal, and agent had personal interest in one-half of deposit but did not interplead vendors, and effect on vendors' interest of litigation between purchaser and agent was uncertain, vendors would be deemed conditionally necessary but not indispensable parties, and proceeding could properly continue without them if circumstances did not permit service. *Gauss* v. *Kirk* (1952, 198 F. 2d 83, 91 U.S. App. D.C. 80, 33 A. L. R. 2d 1085).

35. Official duties

Where the performance of official duties requires an interpretation of the law which governs that performance, the interpretation placed by the officer upon the law will not be interfered with unless it is clearly wrong and the official action arbitrary and capricious. *Hammond* v. *Hull* (1942, 131 F. 2d 23, 76 U.S. App. D.C. 301, certiorari denied 63 S. Ct. 830, 318 U.S. 777, 87 L. Ed. 1145).

The courts have no general supervisory powers over the executive branches or over their officers which may be invoked by writ of mandamus. *Id.*

36. Penalty for failure to give deposition

Where husband had failed to appear for the taking of his deposition concerning alimony pendente lite in divorce action, trial judge properly refused to allow husband to testify at preliminary hearing concerning temporary support. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

37. Personal liability of governmental officer

The fact that this section allows the petitioner to recover damages in the same proceeding does not justify the retention of the petition to charge the secretary personally, since damages are only incident to the allowance of the writ. *Le Crone* v. *McAdoo* (1920, 40 S. Ct. 510, 253 U.S. 217, 64 L. Ed. 869).

38. Plea in abatement

"That the amendment may relate to the withdrawal of a plea in bar and its substitution by one in abatement, or the reverse, does not alter the rule." *Chunn* v. *City & S. R. Co.* (23 App. D.C. 551, reversed on other grounds 28 S. Ct. 63, 207 U.S. 302, 52 L. Ed. 219).

39. Presumptions

Error will not be presumed on appeal and must be shown affirmatively by party asserting it. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

40. Principal and agent

In an action in Municipal Court of District of Columbia, joinder of principal and agent where the principal's liability is predicated solely upon agency is proper. *Bailey* v. *Zlotnick* (1943, 133 F. 2d 35, 77 U.S. App. D.C. 84).

41. Prior law

Under R. S., § 954 (see Fed. Rules Civ. Proc. rules 1, 15, 61, U.S.C. title 28, Appendix), and the Maryland Act of 1785, ch. 80 § 4, the lower court may allow a change, by amendment, of one form of action to another, provided the claim or cause of action sued for be the same in both. *Magruder* v. *Belt* (7 App. D.C. 303).

42. Privileged communications

Whether streetcar motorman's report of accident was a privileged communication which streetcar company could not be compelled to produce in passenger's action against it for injuries could not be determined by court without knowledge of circumstances under which report was made, reason and purpose for which it was made, and to whom it was made. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

That motorman's report to streetcar company of accident was in possession of streetcar company's counsel did not automatically make report a "privileged communication" which company could not be required to produce in passenger's action against it for injuries. *Id.*

43. Power of court

Where no notice to produce is served and the paper is not present at trial, court may decline to order its production where such order would unreasonably delay progress of trial or work legal prejudice to adverse party. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

A subpoena for attendance as witness or for production of documentary evidence is for the purpose of having witness or document present at trial and if witness or document is present in court, though no subpoena is served, court can order witness to take the stand or order production of the document. *Id.*

Trial court erred in ruling that it could not compel production of documentary evidence admittedly in the possession of defense counsel merely because notice to produce or subpoena duces tecum had not been served. *Id.*

44. Powers

United States commissioners have only such powers as to procedure that may be conferred by the State statutes on examining magistrates of the State; United States commissioner can go no further in his procedure than the State examining magistrate could do. *United States* v. *Mace* (C.C.A. 8, 1922, 281 F. 635).

45. Purpose

The true legislative intent was to simplify the practice as between legal and equitable procedure in those courts which already possessed jurisdiction over equitable causes, and was not to give the municipal court general equitable jurisdiction when dealing with defenses to actions. *International Exch. Bank* v. *Pullo* (1923, 285 F. 933, 52 App. D.C. 199).

46. Questions considered

Where case was never submitted to jury, there could be no complaint, on appeal, of trial court's refusal to grant certain instructions. *National Life Ins. Co.* v. *White* (D.C. Mun. App. 1944, 38 A. 2d 663).

Where plaintiff made no motion for an instructed verdict and did not object to submission of case to jury, claim that court erred in not directing a verdict could not be considered. *Abbott* v. *Fant* (D.C. Mun. App. 1944 38 A. 2d 618).

Where no objection or motion for a mistrial was made before the return of the verdict, and court instructed jurors that it was their duty to disregard any remarks of counsel tending to arouse their sympathy, claim that court should have declared a mistrial because counsel referred to appellee as American citizen whose son was overseas fighting for his country would be overruled. *Id.*

47. Questions of fact

In wife's divorce action, husband's motion for new trial on ground that wife's divorce decree from another was invalid because of fraud perpetrated on court in respect of wife's residence presented a "question of fact" and decision granting new trial was not so wanting in evidential support as to be arbitrary. *Ruppert* v. *Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

48. Questions on appeal

Where the trial court found no impropriety in proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. *Stern* v. *Stern Co. of Washington, D.C.* (1953, 200 F. 2d 364, 91 U.S. App. D.C. 338).

49. Reasonable notice

The reasonable notice of motion to require party to produce documentary evidence in his possession or control provided for by this section contemplates that party shall not be required to produce papers at trial unless he has had notice and a reasonable time in which to produce them, what constitutes a reasonable time depending on the circumstances of each case. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

50. Record

Stenographic transcript of former trial of case before a different judge was not properly part of record. *Mee* v. *Marlyn Apartment Co.* (1943, 31 A. 2d 864).

The responsibility for a complete record rests primarily on the parties and not on the trial court or appellate court. *Zweig* v. *Schwartz* (1943, 31 A. 2d 857).

A suggestion by losing party, after case has been briefed, argued, and decided, that there are omissions in the record, come too late.

It is duty of parties coming to appellate court to bring a record complete and adequate for purposes of all questions to be argued, since appellate court cannot consider matter outside record. *Id.*

Where appellees' request to have record corrected was made for first time in motion for rehearing after appellate court had reversed judgment, the request was not in time. *Id.*

If anything material to either party is omitted from record, omission should be called to attention of appellate court timely in order that omission may be supplied and supplemental record, if necessary, filed. *Id.*

If record before Municipal Court of Appeals for the District of Columbia is inadequate to present questions raised, court cannot review the proceedings. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945. 43 A. 2d 44).

Appellate court can consider only what the record discloses. *Heslop* v. *Robert A. Grahame, Inc.* (1943, 31 A. 2d 856). See, also, *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Where copies of letters were attached to defendant's brief but they did not appear in record and counsel had not taken witness stand to identify them nor to recite circumstances of their being written, they were not properly before court on appeal. *McHugh* v. *Duane* (D.C. Mun. App. 1947, 53 A. 2d 282).

51. Reformation, rescission or performance

The Municipal Court for the District of Columbia would be without jurisdiction to try issues appropriate to suit for reformation or rescission of instrument or for specific performance, unless such issues were presented by way of defense to action within the court's jurisdiction. *Howenstein Realty Corporation* v. *Richardson* (1943, 135 F. 2d 803, 77 U.S. App. D.C. 299).

52. Remand

"In the case of *Wiggins Ferry Co.* v. *Ohio & M. R. Co.* (142 U.S. 396, 35 L. Ed. 1055, 12 Sup. Ct. 188), it was held by the Supreme Court that where the facts showed that the plaintiff had an equitable title to relief, but that court, on the state of pleadings before it, was unable to afford relief it could and would remand the case to the court below for amendment of pleadings and further proceedings, in order that the right might be availed of." *Wagenhurst* v. *Wineland* (22 App. D.C. 356). See, also, *Alfred Richards Brick Co.* v. *Atkinson* (16 App. D.C. 462).

53. Requisites of interpleader

The four conditions prerequisite to an order for interpleader are: (1) The same thing, debt, or duty must be claimed by both or all the parties against whom relief is demanded; (2) all their adverse titles or claims must be dependent, or be derived from a common source; (3) the person asking the relief—the plaintiff—must not have or claim any interest in the subject-matter; and (4) he must have incurred no independent liability to either of the claimants—that is, he must stand perfectly indifferent between them in the position merely of a stakeholder. *Morgan* v. *Kraft* (1923, 285 F. 906, 52 App. D.C. 172).

54. Review

An equitable defense not interposed below could not be insisted upon on appeal. *Saks* v. *B. H. Stinemetz & Son Co.* (1924, 293 F. 1005, 54 App. D.C. 38).

55. Rules, validity

The requirements of due process can be satisfied by compliance with the provisions of the statute as construed in Rule 9 (Rules for the Small Claims and Conciliation Branch of the Municipal Court of the District of Columbia), the latter constituting a reasonable exercise of the rule-making power delegated by the statute to the court, and which, when properly construed, neither abridges nor extends the jurisdiction of the court beyond the limits of the act itself, and therefore has the force and effect of law. *Wise* v. *Herzog* (1940, 114 F. 2d 486, 72 App. D.C. 335).

56. Rules of court

Time limitations in court rules governing appeals to Municipal Court of Appeals for District of Columbia were designed to prevent unnecessary delay, and Court of Appeals, in its discretion, may decline to accept as sufficient excuses for failure to comply with limitations. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 34 A. 2d 33).

The Federal Rules of Civil Procedure, 28 U.S.C., Appendix, and the Rules of Municipal Court of Appeals for District of Columbia are intended to avoid harshness of the old rules. *Id.*

Where there has not been a compliance with requirements of rules governing appeals, court may, either upon appropriate motion, or sua sponte, dismiss appeal. *Lloyd* v. *U.S. Fidelity & Guaranty Co.* (1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 83, 320 U.S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U.S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U.S. 770, 88 L. Ed. 1595).

Where appellant did not submit to trial judge nor to opposing counsel, a "Statement of Proceedings and Evidence" as required by court rules, nor was such a statement or agreed statement in lieu thereof filed, a motion to have the appeal docketed and dismissed could have been filed by appellee. *Id.*

Where appellant did not submit to trial judge nor to opposing counsel a "Statement of Proceedings and Evidence" but there was set forth in brief for appellant a statement of case and appellee's brief contained a section entitled "Restatement of the Case," the statements would be treated as part of record on appeal and appeal would be entertained, but such action was not to be construed as a precedent for pending or future cases. *Id.*

That appellant filed notice of appeal the next day after judgment rather than waiting the full ten days did not excuse unexplained failure to follow up with filing designation of record and assignment of errors within five days required by rule. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623).

Where appellant failed to file designation of record and statement of errors within five days from date of filing notice of appeal as required by court rule and no extraordinary reason for granting relief was shown, appellee's motion to docket and dismiss was granted. *Id.*

The rules of Municipal Court of Appeals contemplate that assignments of error shall be specific and definite for the reason that many cases in trial court are not stenographically reported and statements of proceedings and evidence in those cases are prepared in view of errors claimed. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 2d 728).

The rules of the Municipal Court of Appeals providing how an appeal should be taken and fixing time for filing notice of appeal are in conformity with mandate of this section to follow the Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, except as to time limits which conform to the Rules of Practice and Procedure in Criminal Cases, U.S. Code, title 18, Appendix, adopted by the Supreme Court. *Beach* v. *District of Columbia* (D.C. Mun. App. 1946, 44 A. 2d 926).

On appeal from judgment of Municipal Court, the Municipal Court of Appeals will not apply a Federal Rule of Civil Procedure, U.S. Code, title 28, Appendix, which the Municipal Court has not adopted. *Conrad* v. *Medina* (D.C. Mun. App. 1943, 47 A. 2d 562).

Appellants' failure to file a statement of errors was a breach of rules. *Hoover* v. *Babcock* (D.C. Mun. App. 1947, 53 A. 2d 591).

The court rule providing that judgment if no motion is filed, shall be entered on fifth day after verdict or finding, does not mean that judgment is to be dated as of the fifth day even though entered later. *Corbett* v. *Urciolo* (D.C. Mun. App. 1947, 54 A. 2d 577).

The purpose of the rules of the Municipal Court of Appeals is the orderly and prompt disposition of appeals *Cunningham* v. *Dade* (D.C. Mun. App. 1947, 52 A 2d 894).

Rule permitting Municipal Court of Appeals to call for further statement of evidence, approved by trial court, if such is necessary to determine application for leave to appeal, contemplates such action only when there is at least a prima facie showing of merit in the application. *Ionescue* v. *Dettmers* (D.C. Mun. App. 1947, 53 A. 2d 237).

Rules of the appellate court permit the use of original papers on appeal, and the statute itself provides that there shall be no requirement for printed records or briefs. Rules make it possible for counsel and parties to expedite the hearing of appeals, but they still have the responsibility for calling to our attention the need for emergency actions. *Hill* v. *United States* (D.C. Mun. App. 1950, 75 A. 2d 138).

The purpose of the rules is the orderly and prompt disposition of appeals. Rules are not made for the convenience of the court but for the benefit of litigants, and counsel who have the right to rely on them, ought to comply with them. The court will not condone either willful or negligent disregard of court rules or orders. *Phucas* v. *Washington-Virginia-Maryland Coach Company* (D.C. Mun. App. 1950, 76 A. 2d 59).

Where counsel for appellant has given no explanation of how an inadvertence could have occurred in not filing the brief, court is obliged to conclude that counsel, after receiving two extensions of time totaling twenty-eight days, simply failed to comply with the rules and order of this court. *Id.*

Where the so-called brief in no manner complied with rules, consisted of three pages with an obviously incomplete statement of the case in the first page, seven claims of error in the third, and containing some general statements under the heading "Conclusion" with no index, no citations of authority and no arguments; such a document is not entitled to be called a brief and appeal must be dismissed. *Id.*

57. Scire facias

"The power of amendment is equally applicable and to the same extent in the case of a scire facias as in the case of an ordinary execution." *Otterbach* v. *Patch* (5 App. D.C. 69).

58. Self-incrimination

Municipal Court for District of Columbia, Domestic Relations Branch, properly permitted defendant in annulment action to invoke Fifth Amendment privilege against self-incrimination in support of his refusal to respond to requests for admissions seeking his admission that he was married to third person two years before his marriage to plaintiff, that to his personal knowledge his first wife was still living, that marriage had not been dissolved by divorce or annulment, that he had received no notice that such proceedings had been instituted by his first wife, and that he was in fact still married to

her at time of purported marriage to plaintiff. *Joann Mayo* v. *Raymond Ford* (D.C. Mun. App. 1962, 184 A. 2d 38).

59. Service on third person

Personal service upon third person within the jurisdiction is necessary to bring him into court and personal service out of the jurisdiction or service by publication is insufficient. *Dexter* v. *Lichliter* (24 App. D.C. 222).

60. Set-off

Damages for breach of warranty of chattel sold on conditional sale, proper set-off in replevin. *Marks* v. *Frigidaire Sales Corp.* (1932, 54 F. 2d 974, 60 App. D.C. 359, certiorari denied 52 S. Ct. 394, 285 U.S. 544, 76 L. Ed. 936).

61. Setting aside arbitrator's award

Where the trial court found no impropriety in proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. *Stern* v. *Stern Co., of Washington, D.C.* (1953, 200 F. 2d 364, 91 U.S. App. D.C. 338).

Award of referee or arbitrator may be vacated or modified only on grounds clearly specified by this section. *Id.*

Arbitrators' corruption or gross mistake, either apparent on face of arbitration award or made out by evidence, warrants court's interference with award, but arbitrators' mere error of judgment does not warrant such interference. *Mascuso* v. *L. Gillarde Co.* (D.C. Mun. App. 1948. 61 A. 2d 677).

If the arbitrator professes to decide upon the law and he mistakes it, the court will set aside the award; also where the arbitrator's reasons did not appear upon the face of the award, but only upon another paper delivered therewith. *Bailey* v. *District of Columbia* (4 App. D.C. 356).

62. Specific defenses

A lessee's plea denying default in rent sued for is a good equitable defense. *Smith* v. *O'Connor* (1937, 88 F. 2d 749, 66 App. D.C. 367).

When tenant is sued for possession of realty for non-payment of rent, he may defend by an equitable defense sufficient to defeat, in whole or in part, landlord's claim for rent or assert, by way of set-off, total or partial failure of consideration. *Seidenberg* v. *Burka* (D.C. Mun. App. 1954, 106 A. 2d 499).

A tenant who is sued for possession of real property for non-payment of rent may defend by an equitable defense sufficient to defeat landlord's claim for rent in whole or in part, or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action. *Lalekos* v. *Manset* (D.C. Mun. App. 1946, 47 A. 2d 617).

In landlord's action for possession of leased premises and for money judgment for rent, exclusion of testimony of oral agreement to repair, made before signing of lease, was error, since violation of such agreement would have constituted an equitable defense. *Mitchell* v. *David* (D.C. Mun. App. 1947, 51 A. 2d 375).

63. Statement of proceedings and evidence

Where only explanation for failure to file statement of proceedings and evidence within time or failure to apply for extension of time was that appellant's counsel was occupied with trial of cases, appellee's motion to docket and dismiss would be granted. *Stroup* v. *Howe* (1943, 32 A. 2d 297).

Where statement of proceedings and evidence is prepared by counsel for one of interested parties with or without suggestions or instructions from court, counsel for other side is entitled to be served with copy and afforded an opportunity of making objections prior to final action thereon. *Franklin* v. *Chas. C. Schulman Co.* (1943, 31 A. 2d 871).

The settling and approval of statement of proceedings and evidence is a "judicial function", and trial judge should not delegate the duty to counsel for one of the parties. *Id.*

A properly authenticated statement of proceedings and evidence must be accepted by appellate court as conclusive. *Id.*

Where appellee's counsel filed objections to statement of proceedings and evidence prepared by appellant's counsel and after conference trial judge directed appellee's counsel to prepare statement, approval of statement prepared by appellee's counsel without notice to appellant warranted a new trial. *Heslop* v. *Robert A. Grahame, Inc.* (1943, 31 A. 2d 856).

A statement of proceedings and evidence properly settled and approved by trial judge must be accepted by appellate court as correct. *Id.*

Where trial judge did not settle statement, but instead approved two conflicting statements, appellate court could not pass on the merits and would remand case to trial court to approve and send to appellate court one correct statement of proceedings and evidence, or, if it was impossible to do so, to set aside judgment and order a new trial. *Id.*

Where appellant submitted a statement of proceedings and evidence to the trial judge and appellees filed objections thereto and both the statements and objections were approved by the trial judge and separately incorporated into the record, such procedure was confusing and proper procedure was to have statements of proceedings and evidence reflect in one document a complete and continuous narrative statement of what happened at the trial. *Washington Nat. Ins. Co.* v. *Stanton* (1943, 31 A. 2d 680).

Testimony in trial court may be presented to the Municipal Court of Appeals by an agreed statement on appeal, by a narrative statement of proceedings and evidence prepared by counsel and approved by the trial judge, and through the medium of a reporter's transcript of the testimony. *Fraser* v. *Crounse* (D.C. Mun. App. 1946, 47 A. 2d 96).

Rules contemplate that in preparing a statement of proceedings and evidence, both parties be given an opportunity to assist in the preparation, and when disagreement arises as to what actually occurred at the trial, it is the function of the trial judge to confer with the parties and settle the dispute since the appellate court must accept as conclusive the statement properly settled and approved. *Edmonston* v. *Stanley* (D.C. Mun. App. 1950, 76 A. 2d 778).

64. Statute of limitations

Where a declaration is filed within the period of the statute of limitations, an amendment made after the statute has run which charges the same cause of action in a different form is not open to the defense of the statute. *Beasley* v. *Baltimore & O. R. Co.* (27 App. D.C. 595, 6 L.R.A., N.S., 1048). See, also, *District of Columbia* v. *Frazer* (21 App. D.C. 154).

In an action in ejectment, where the defense was the general issue, it is not error to permit defendant to amend by pleading the statute of limitations (after the evidence has been introduced and a motion by plaintiff for a directed verdict has been overruled). "Plaintiff was not taken by surprise; no additional evidence was introduced; plaintiff sustained no possible legal injury." *McMillan* v. *Fuller* (41 App. D.C. 384).

Mandamus, being a remedial process, is not within the statute of limitations, but is within the discretion of the court, and application to compel restoration to government service is barred by laches of twenty months. *United States ex rel. Arant* v. *Lane* (1919, 39 S. Ct. 293, 249 U.S. 367, 63 L. Ed. 650).

65. Stay of proceedings

This section does not authorize an equity court, having jurisdiction, to stay proceedings to await the bringing of another action in an inferior court. *Sambataro* v. *Caffo* (1927, 20 F. 2d 276, 57 App. D.C. 260).

66. Striking of pleading in divorce action

Rule that pleadings may be stricken if person wilfully fails to appear before officer for deposition purposes is permissive and does not require that it be done and was not applicable in divorce case since only purpose for striking an answer would be to proceed as if in default, but code specifically forbids the grant of divorce on default. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

67. Striking pleadings

Although it was error to strike husband's pleadings in divorce action because of his failure to appear before officer for deposition purposes concerning alimony pendente lite, where husband had been given opportunity to

appear at final hearing, but husband failed to appear, husband's rights had not been materially prejudiced and limited divorce was properly granted to wife. *Hipp* v. *Hipp* (D.C. Mun. App. 1926, 134 A. 2d 493).

68. Submission to arbitration without order of court

As to submission to arbitration without an order of court, see *District of Columbia* v. *Bailey* (1898, 18 S. Ct. 868, 171, U.S. 161, 43 L. Ed. 118).

69. Substitution of parties

Although this section should be liberally construed, a suit begun in the name of a deceased plaintiff is a nullity (and this is true, although the plaintiff is merely a formal, nominal, use plaintiff); hence there can be no amendment substituting the administrator of the deceased plaintiff as party plaintiff. *Karrick* v. *Wetmore* (22 App. D.C. 487). See, also, *Wetmore* v. *Karrick* (1907, 27 S. Ct. 434, 205 U.S. 141, 51 L. Ed. 745).

70. Summons

Where wife obtained a limited divorce from husband, and thereafter she filed a petition for enlargement of the decree into a decree for absolute divorce, and rule to show cause was issued, but husband refused to appear, rule to show cause would be discharged, and wife was required to proceed by summons. *Stern* v. *Stern* (1948, 80 F. Supp. 266).

71. Time for motions

Where finding is made out of presence of counsel or parties, notice of such action shall be given by mail, and in such a situation the time for filing a motion for new trial is enlarged by one day. *United Retail Cleaners and Tailors Ass'n of D.C.* v. *Denahan* (D.C. Mun. App. 1945, 44 A. 2d 69).

Motion of appellant's counsel for leave to file brief almost a month after it was due, on ground that because of the pressure of other cases he had not been able to concentrate on the preparation of the brief sought to be filed, was denied and appeal was dismissed. *Karika* v. *District of Columbia* (D.C. Mun. App. 1946, 47 A. 2d 93).

72. Trial, amendment at

To warrant obtaining leave to amend a pleading at trial there must be some showing of surprise or some reasonable explanation of the delay in seeking to amend. *Plummer* v. *Johnson* (D.C. Mun. App. 1944, 35 A. 2d 647).

73. Use of mandamus in general

Mandamus is the proper remedy when a case is outside the discretion of the inferior court, and is one of irregularity, or against law, or of flagrant injustice, or without jurisdiction. *Ex parte Bradley* (1866, 74 U.S. 364, 7 Wall. 364, 19 L. Ed. 214).

Where an administrative remedy is available, it must generally be first exhausted before judicial relief may be obtained by writ of mandamus or otherwise. *Hammond* v. *Hull* (1942, 131 F. 2d 23, 76 U.S. App. D.C. 301, certiorari denied 63 S. Ct. 830, 318 U.S. 777, 87 L. Ed. 1145).

Mandamus should issue only when the duty of the officer to act is clearly established and plainly defined and the obligation to act is peremptory. *Id.*

A petition for mandamus to review action of trial court in treating petitioner's complaint as an application for writ of habeas corpus would be denied, since petitioner's remedy was by appeal, and mandamus may not be used as a substitute for appeal. *In re De Marcos* (1944, 139 F. 2d 841, 78 U.S. App. D.C. 187).

Mandamus lies to compel the performance of a plain legal duty, not to control the way in which administrative discretion is exercised. *Prince* v. *Klune* (1945, 148 F. 2d 18, 80 U.S. App. D.C. 31).

Writ of mandamus may not be used as a substitute for appeal. *In re Fullam* (1946, 152 F. 2d 141, 80 U.S. App. D.C. 273).

Mandamus never lies except where there is no other remedy. *McMurtrey* v. *Clark* (1946, 157 F. 2d 703, 81 U.S. App. D.C. 294, certiorari denied 67 S. Ct. 492, 329 U.S. 805, 91 L. Ed. 687).

A writ of mandamus neither creates nor confers power to act, but may be used only to compel exercise of powers already existing. *Id.*

Where duty is not plainly prescribed but depends on statute or statutes, the construction and application of which is not free from doubt, it is regarded as involving character of judgment or discretion which cannot be controlled by mandamus. *Thomas* v. *Vinson* (1946, 153 F. 2d 636, 80 U.S. App. D.C. 346).

Mandamus is employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way nor to direct the retraction or reversal of action already taken in the exercise of either. *Edgerton* v. *Kingsland* (1948, 168 F. 2d 128, 83 U.S. App. D.C. 8).

74. Use of mandamus in particular cases

In action by a contractor against the Emergency Fleet Corporation to have a claim submitted to the audit of the Comptroller General, mandamus is the proper remedy. *United States ex rel. Skinner & Eddy Corp.* v. *McCarl* (1927, 48 S. Ct. 12, 275 U.S. 1, 72 L. Ed. 131).

For use of mandamus in particular cases (since 1910), see *United States ex rel. Thomson* v. *Custis* (35 App. D.C. 247) to board of medical advisors to compel issuance of license to practice); *United States ex rel. Phillips* v. *Ballinger* (35 App. D.C. 520) (to Secretary of Interior to vacate order disbarring attorney); *Rudolph* v. *Moshewvel* (37 App. D.C. 76) (to Commissioners, District of Columbia, to compel medical board to examine fireman dismissed for physical disability); *United States ex rel. Hammond* v. *Custis* (37 App. D.C. 449) (to board of medical advisors to compel issuance of license to practice); *United States ex rel. Todd* v. *Gongwer* (37 App. D.C. 555) (to Auditor of Treasury to compel consideration of claim for longevity pay); *United States ex rel. Moser* v. *Myer* (38 App. D.C. 13) (to Secretary of Navy to compel placing of relator's name on retired list); *United States ex rel. McKenzie* v. *Fisher* (39 App. D.C. 7) (to Secretary of Interior to compel issuance of land patent); *Kalbfus* v. *Siddons* (42 App. D.C. 310) (to compel restoration to public office); *Prail* v. *Stafford* (42 App. D.C. 383) (to compel justice of District Court, District of Columbia, to enter final decree on mandate of Court of Appeals); *United States ex rel. Newman* v. *City & Suburban Co.* (42 App. D.C. 417) (to compel respondent to condemn land for street extension); *Persing* v. *Daniels* (43 App. D.C. 470) (to compel restoration of employee to service of United States); *United States ex rel. Bowlegs* v. *Lane* (43 App. D.C. 494); *Lane* v. *Duncan Townsite Co.* (44 App. D.C. 63, affd. 245 U.S. 308, 62 L. Ed. 309, 38 Sup. Ct. 99); *Hoglund* v. *Lane* (44 App. D.C. 310, affd. 244 U.S. 174, 61 L. Ed. 1066, 37 Sup. Ct. 558); *United States ex rel. Reynolds* v. *Lane* (45 App. D.C. 50) (to compel Secretary of Interior to approve or disapprove lease); *Ewing* v. *United States ex rel. Fowler Car Co.* (45 App. D.C. 185) (to Commissioner of Patents to compel direction of interference in patent cases) revd. on the ground that the proper remedy was a suit in equity (244 U.S. 1, 61 L. Ed. 955, 37 Sup. Ct. 494); *Blair* v. *United States ex rel. Hellman* (45 App. D.C. 353) (to school board to compel restoration of relator as a teacher); *Handel* v. *Lane* (45 App. D.C. 389); *Richards* v. *Davison* (45 App. D.C. 395) (to assessor, District of Columbia, to compel issuance of license to conduct dance hall). *United States ex rel. Schwerdtfeger* v. *Brownlow* (45 App. D.C. 412) (to commissioners, District of Columbia, to compel placing of relator's name on fireman's pension roll); *Hight* v. *McCoy* (46 App. D.C. 238) (to compel justice, District Court, District of Columbia, to sign bill of exceptions); *United States ex rel. Ccal Co.* v. *Roper* (46 App. D.C. 443); *United States ex rel. Ashley* v. *Roper* (48 App. D.C. 69) (to compel Secretary of Treasury to abrogate decision construing act of Congress); *LeCrone* v. *McAdoo* (48 App. D.C. 181, dism. 253 U.S. 217, 64 L. Ed. 869, 40 Sup. Ct. 510) (to compel Secretary of the Treasury to pay over fund to petitioner); *United States ex rel. McDonald* v. *Lane* (49 App. D.C. 234, 263 Fed. 630); *United States ex rel. McDuffie* v. *Hawley* (50 App. D.C. 137, 269 Fed. 479) (to Board of Dental Examiners to compel issuance of license to dentist); *United States ex rel. Anderson* v. *Simon* (50 App. D.C. 199, 269 Fed. 715) (to school board to restore teacher); *United States ex rel. Russell* v. *District of Columbia* (50 App. D.C. 296, 271 Fed. 370); *Weeks* v. *United States ex rel. Creary* (51 App. D.C. 195, 277 Fed. 594) (to Secretary of War to vacate discharge and restore to rank in Army); *United States ex rel. Norris* v. *Forbes* (51 App. D.C. 248, 278 Fed. 331) (to Director of Bureau of War

Risk Insurance to compel payment of insurance); *Robertson* v. *United States ex rel. Baff* (52 App. D.C. 177, 285 Fed. 911) (to review proceedings disbarring attorney from Patent Office and compel restoration).

Where trial judge had rejected affidavits of bias and prejudice because they failed to comply with statutory requirements both as to time of filing and as to manner of certification and had refused to disqualify himself and trial was in progress, federal appellate court would not issue writ of mandamus or prohibition. *Dilling* v. *U.S.* (1944, 142 F. 2d 473, 79 U.S. App. D.C. 47).

Where district court had ruled on petitioner's motion in forma pauperis for transcript of record, indictment and judgment containing sentence and order of commitment for use in preparing a motion to vacate judgment, mandamus would not lie to review determination of district court. *In re Fullam* (1946, 152 F. 2d 141, 80 U.S. App. D.C. 273).

Mandamus to compel payment of widow's allowance by Paymaster General of Navy was inappropriate remedy in view of fact that act to be performed was not purely ministerial, but widow was entitled under Federal Rule of Civil Procedure 54c, U.S. Code, Title 28, Appendix, to whatever judgment evidence warranted, irrespective of whether it was precise relief prayed for in complaint, and hence, under provision of Administrative Procedure Act, U.S. Code, title 5, § 1009, that any applicable form of relief might be granted, judgment in favor of widow would be given form of a mandatory injunction directing necessary payment, though complaint prayed for relief in nature of mandamus. *Snyder* v. *Buck* (1948, 75 F. Supp. 902, reversed on other grounds 179 F. 2d 466, 85 U.S. App. D.C. 428, affirmed 71 S. Ct. 93, 340 U.S. 15, 95 L. Ed. 15).

75. Use plaintiff

Where suit was commenced by plaintiff in his individual name and thereafter plaintiff added name of insurance company as a use plaintiff on suggestion of trial judge and without objection by defendant, and it appeared on appeal that insurance company was not a necessary party to the action but that defendant had not been harmed by addition of such party, judgment would be modified by striking name of insurance company. *Quinn* v. *Milner, to Use of Hartford Fire Ins. Co.* (D.C. Mun. App. 1943, 34 A. 2d 259).

Chapter 3.—PROCESS AND PARTIES

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
13-301. Courts to which applicable.
13-302. Service by marshal.
13-303. Service or execution on Sunday.

SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

13-331. Service under other laws and rules of court.
13-332. Service on infants—Appointment and compensation of guardian and attorney.
13-333. Service on incompetent persons.
13-334. Service on foreign corporations.
13-335. Service by publication on domestic or foreign corporations.
13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.
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13-338. Prerequisites for order of publication.
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13-340. Manner of publication—Mailing of copy—Default—Appointment and compensation of guardian an attorney.
13-341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 13-301. Courts to which applicable.

Except as otherwise specifically provided by law or rules of court, this chapter applies in all courts of the District of Columbia, including any branches of the courts. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-755, 11-765 (Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Apr. 11, 1956, ch. 204, § 109, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 7, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section consolidates parts of sections 11-755(b) and 11-765. For remainder of those sections, see tables.

Section 11-751a of D.C. Code, 1961 ed., enacted by the Act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section has been completely rewritten to clarify the application of the provisions of this chapter on process.

The provisions of this chapter on the manner of service of process appeared in the 1901 Code under the subchapter on the former Supreme Court of the District of Columbia, which is now the United States District Court. But they were not by their terms limited to a particular court and since there were no provisions concerning manner of service of process issued by the justices of the peace, whose jurisdiction was taken over by the first Municipal Court, it seems probable that these provisions also applied in that court. Section 11-755(b) of D.C. Code, 1961 ed., provided that service of process in the civil division of the Municipal Court for the District of Columbia, created by the merger of the first Municipal Court and the Police Court in 1942, should be had as provided under existing law for such former Municipal Court, or in such other manner as might be prescribed by rules of court.

With respect to the Domestic Relations Branch of the Municipal Court (now, Court of General Sessions), section 11-765 of D.C. Code, 1961 ed., provided in part that service of process for the Domestic Relations Branch might be had by publication in the same manner as service of process was had by publication for the United States District Court for the District of Columbia.

As pointed out in the revision note under section 13-331 herein, the basic provisions governing process are found in the Federal Rules of Civil Procedure, which apply in the United States District Court, and in the rules of the other courts and branches which, under section 13-101 herein, are to conform as nearly as may be practicable to the Federal Rules of Civil Procedure.

Since this chapter is supplementary to the rules, this section makes the chapter applicable to all courts and branches, except as otherwise specifically provided by law or rules of court.

§ 13-302. Service by marshal.

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions, including the Domestic Relations Branch thereof. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11-748, 11-751a, 11-755, 11-765, 11-771a, 11-774 (Mar. 3, 1901, ch. 854, § 41, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, §§ 4, 9, 56 Stat. 192, 196; Apr. 11, 1956, ch. 204, § 109, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87-873, §§ 1, 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates part of the first paragraph of section 11-748 of the D.C. Code, 1961 ed., which related to service of process of the first Municipal Court prior to its merger, in 1942, with the Police Court, to form the second Municipal Court; that part of subsec. (b) of section 11-755 thereof which provided that service of process in the civil division of the court thus formed "shall be had as provided under existing law" for the Municipal Court prior to the merger, "or in such other manner as may be prescribed by rules of court"; the first sentence of section

11–765 thereof which, in connection with the Domestic Relations Branch of the second Municipal Court, likewise provided that service of process should be made by the United States marshal or his authorized assistants; and the second paragraph of subsec. (a) of section 11–774 thereof, which, with respect to the Municipal Court of Appeals (now, District of Columbia Court of Appeals), also provided for service of process by the United States marshal. For remainder of sections 11–748, 11–755, 11–765, and 11–774, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1962 ed., both enacted by the Act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions; and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provision of section 11–748 of D.C. Code, 1961 ed., that the coroner shall serve the process of the Municipal Court (now, Court of General Sessions) upon disqualification of the marshal, is omitted as obsolete or, in any event, unnecessary. It would seem that in such cases the process could be served by the marshal's deputies.

The opening phrase of this section is inserted to cover the provisions of the rules of court which permit service by persons appointed by the court and, in the case of subpoenas, by any persons over 21 years of age and not interested in the action. See Court of General Sessions Rules, Civil Rule 4(g).

§ 13–303. Service or execution on Sunday.

Except in cases of treason, felony, or breach of the peace, a writ, process, warrant, order, judgment, or decree may not be served or executed, or caused to be served or executed, on Sunday. Any such service or execution is void to all intents and purposes. A person who makes such a service or execution is liable to the aggrieved party to the same extent as if he had done it without a writ, process, warrant, order, judgment, or decree. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 13–102 (29 Car. 2, ch. 7, § 6, 1676; Kilty's Rept., p. 242; Alex. Br. Stat., p. 562; Comp. Stat., C.C., p. 451, § 54).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Necessity for summons 1
Search warrant 2
Service of process 3

1. Necessity for summons

Where wife obtained a limited divorce from husband, and thereafter she filed a petition for enlargement of the decree into a decree for absolute divorce, and rule to show cause was issued, but husband refused to appear, rule to show cause would be discharged, and wife was required to proceed by summons. *Stern* v. *Stern* (D.C. Sup. 1948, 80 F. Supp. 266).

2. Search warrant

Where defendants were charged with violating statute in the sale of alcoholic beverages, the intervention of Sunday did not prevent a valid execution of the search warrant and the relevancy of the validity of the search warrant is not apparent where, under the ruling of the trial court, no evidence seized under the warrant was used in evidence against defendant. *Edwards* v. *District of Columbia* (D.C. Mun. App. 1949, 68 A. 2d 286).

3. Service of process

Where trial court found that the place of service at time of service was neither defendant's dwelling house nor her usual place of abode, an order quashing service supported by more than substantial evidence must be affirmed. *Halpern* v. *Gunn* (D.C. Mun. App. 1949, 66 A. 2d 207).

SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

§ 13–331. Service under other laws and rules of court.

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

(1) other law, including any other provisions of this Code; or

(2) rule of court.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1.)

Revision Notes

This section is inserted to make it clear that this chapter does not supersede any other methods of service authorized by other provisions of law and by rules of court.

The basic provisions governing the service of process are found in Rule 4 of the Federal Rules of Civil Procedure and the corresponding rules of the other courts. In some situations, however, these rules apply the federal statutes or the laws of the state (which includes the District of Columbia under Rule 81). Therefore, this chapter contains statutory provisions that were continued in effect by the rules.

There are also some federal statutes of general application that govern service of process in the District. The most important is 28 U.S.C. § 1655, providing for service on absent defendants in actions concerning real property.

Other provisions of this Code which are continued in effect by this section include chapter 9 of Title 29, relating to service on domestic and foreign business corporations; and section 40–423, concerning nonresident motorists.

Cross References

Attachment and garnishment proceedings, process in, see § 16–502.

Institutions of learning, service of process against, see § 29–412.

Insurance companies, service of process upon, see §§ 35–423, 35–601, 35–1327.

Federal Rules of Civil Procedure

Issuance and service of summons, see Rule 4, U.S. Code, title 28, Appendix.

Summons, see Form 1, Appendix of Forms, U.S. Code, title 28, Appendix.

§ 13–332. Service on infants—Appointment and compensation of guardian and attorney.

(a) When an infant is a party defendant in an action, the summons and complaint shall be served upon him personally and, when he is under 16 years of age, upon the person with whom he resides, if within the District. The infant shall be produced in court unless, for cause shown, the court dispenses with his appearance. The provisions of rules of court regarding guardians ad litem apply, and whenever in the judgment of the court the interests of an infant defendant require it, the court shall assign an attorney to represent the infant whose compensation shall be paid by the plaintiff, or out of the estate of the infant, at the discretion of the court.

(b) An infant who secretes himself or evades service of process may be proceeded against as if he were a nonresident.

(c) Whoever secretes an infant against whom process has issued, so as to prevent service of the process, or prevents his appearance in court, is liable to attachment and punishment as for contempt. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 13–105, 13–106 (Mar. 3, 1901, ch. 854, §§ 102, 103, 31 Stat. 1205, 1206; June 30, 1902, ch. 1329, 32 Stat. 523).

Section consolidates sections 13–105 and 13–106 of D.C. Code 1961 ed.

This section supplements Rule 4(d)(2) of the Federal Rules of Civil Procedure, which requires service on an infant in the manner prescribed by the law of the state.

In subsec. (a), the words "The provisions of rules of court regarding guardians ad litem shall apply" are substituted for the provisions of section 13–105 of D.C. Code, 1961 ed., for appointment of guardians ad litem for infants. See Rule 17(c) of the Federal Rules of Civil Procedure, and Rule 17(b) of the civil rules of the Court of General Sessions, the latter being patterned upon the former. Under each rule, the court shall appoint a guardian ad litem or make such order as it deems proper for the infant's protection. See, also, Rule 1 of the Domestic Relations Branch of the Court of General Sessions, and Rule 27 of Small Claims and Conciliation Branch thereof, both of which provide that, insofar as applicable, the rules of the civil division shall govern in those branches, and the former of which provides that, insofar as applicable, the Federal Rules of Civil Procedure shall also govern in the Domestic Relations Branch. And see section 13–101 of this revised Part with respect to rules of the Court of General Sessions and its branches.

Further, under Rule 55(b)(2) of the Federal Rules of Civil Procedure, and Rule 55(b) of the rules of the Court of General Sessions (Part I, Civil Division), a default judgment may not be entered against an infant unless he is represented in the action by a general guardian or other representative who has appeared therein.

Changes are made in phraseology.

CROSS REFERENCES

Guardians ad litem—

Insanitary buildings, condemnation proceedings, see § 5–624.

Parks and playgrounds, land for, see § 1–1011.

Streets, land for, see § 7–204.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, U.S. Code, Title 28, Appendix.

NOTES TO DECISIONS UNDER PRIOR LAW

Adoption 1
Answer filed by guardian 2
Appointment of guardian ad litem 3
Attorney's fees 4
Civil proceedings 5
Guardians' fees 6
Representation 7
Review 8

1. Adoption

General statutes prescribing appointment of guardian ad litem to protect infants, and the Federal Rules of Civil Procedure in the District Courts authorizing appointment of guardian ad litem for infant or incompetent person not otherwise represented in an action do not govern procedure in adoption proceedings. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

2. Answer filed by guardian

Decree of court is valid against infant although there was no service upon him, where a guardian ad litem had been appointed for him and an answer had been filed by such guardian. *Manson* v. *Duncanson* (1897, 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

3. Appointment of guardian ad litem

Trial courts have a mandatory duty to appoint a guardian ad litem for every infant who is sued. *Besarick* v. *Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

Trial courts have mandatory duty under this section to provide guardian ad litem for every underage defendant, and to make inquiry as to defendant's actual age whenever the defense of infancy is advanced. *Gray* v. *Droze* (D.C. Mun. App. 1947, 55 A. 2d 340).

Where defense of infancy was asserted, trial court should satisfy itself as to defendant's age and appoint guardian ad litem before proceeding with trial, if infancy were established, even though defendant's attorney did not make formal request for guardian ad litem and did not insist on offering testimony as to defendant's age. *Id.*

If defendant was infant, service by leaving copy of complaint and summons with person of suitable age at his usual place of abode was improper, and default judgment entered against defendant for whom no guardian ad litem had been appointed was void: and verified affidavit, accompanying motion to set aside default judgment and giving birth date which, if accurate, established defendant's infancy, compelled inquiry as to actual age of defendant. *Hamer* v. *Eastern Credit Association, Inc., etc.* (D.C. App. 1963, 192 A. 2d 127).

4. Attorneys' fees

Where landlord brought an action against an infant tenant for rent, and tenant engaged services of counsel selected by tenant herself, but not assigned by the court, counsel was not impliedly appointed by the court by being awarded a fee within meaning of statute providing for appointment of an attorney for an infant defendant and assessment of his fees against a plaintiff, and therefore, in the absence of such appointment, trial court was without power to assess landlord for an attorney's fee. *Besarick* v. *Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

5. Civil proceedings

This section applies only to civil and not criminal proceedings. *Ledrick* v. *United States* (42 App. D.C. 384).

6. Guardians' fees

In action against minor defendant, there was no abuse of discretion by trial court in ordering fee awarded to guardian ad litem for minor defendant to be paid from the estate of the minor in favor of whom judgment had been rendered in the litigation giving rise to the appointment of the guardian ad litem. *Reed* v. *Bulman* (1957, 244 F. 2d 772, 100 U.S. App. D.C. 324).

7. Representation

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, but may be a relative or friend selected by the court. *Dooling* v. *Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

8. Review

Although a landlord did not assign as error lack of authority in lower court to allow an infant tenant an attorney's fees after landlord dismissed her action for rent, Municipal Court of Civil Appeals would nevertheless, in the interests of fundamental justice, consider and correct error of trial court in awarding tenant an attorney's fee without strictly complying with governing statutory provisions for appointment of an attorney for an infant defendant. *Besarick* v. *Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

§ 13–333. Service on incompetent persons.

When a person non compos mentis is a party defendant in an action, process shall be served upon him personally, if within the District, and upon his committee, if there is one within the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–107 (Mar. 3, 1901, ch. 854, § 104, 31 Stat. 1206; June 30, 1902, ch. 1329, 32 Stat. 523).

This section supplements Rule 4(d)(2) of the Federal Rules of Civil Procedure, which requires service on an incompetent person in the manner provided by the law of the State, and Rule 4(c)(2) of the civil rules of the Court of General Sessions, which requires service on an incompetent person in the manner provided by law.

The provision of section 13–107 of D.C. Code, 1961 ed., for appointment of a guardian ad litem is omitted as covered by Rule 17(c) of the Federal Rules of Civil Procedure, and Rule 17(b) of the civil rules of the Court of General Sessions.

Changes are made in phraesology.

CROSS REFERENCES

Guardians ad litem—
Insanitary buildings, condemnation proceedings, see § 5–624.
Parks and playgrounds, land for, see § 1–1011.
Streets, land for, see § 7–204.
Service of process on inmates of the District Training School, see § 32–627.
Summons in feeble-minded inquest, see § 32–609.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, U.S. Code, Title 28, Appendix.

§ 13–334. Service on foreign corporations.

(a) In an acton against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employe of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–103 (Mar. 3, 1901, ch. 854, § 1537, 31 Stat. 1419; June 30, 1902, ch. 1329, 32 Stat. 544; Feb. 1, 1907, ch. 445, 34 Stat. 874).

This method of service on foreign corporations is an alternative to the method provided by Rule 4(d)(3) of the Federal Rules of Civil Procedure, and is authorized by Rule 4(d)(7).

Another method of service on foreign corporations is found in chapter 9 of Title 29 of the D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Agents 2
Concealment by agent 3
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Contracts entered into or to be performed 5
Definitions 6
Doing business 7
General appearance 8
In general 1
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Pending bankruptcy proceeding 11
Pleading 12
Purpose 13
Service upon officer 14
Statute must be strictly followed 15

1. In general

It was intended merely to remedy an existing mischief by providing a simple and effectual way through which a foreign corporation doing business in the District of Columbia might be brought before the court and it does not attempt to limit the general jurisdiction of the courts of the District and cannot prevent their jurisdiction from attaching in any case where a foreign corporation might, like a natural person resident elsewhere, appear by competent authority and answer the cause of action. *Howard* v. *Chesapeake & O. R. Co.* (11 App. D.C. 300).

2. Agents

Where attorneys for plaintiff and defendant corporations, with authority and approval of their clients, compromised their differences and thereafter defendants paid plaintiff as required by agreement, which was done through attorneys, attorneys for defendant corporations, which were both incorporated outside district, were not, in subsequent suit involving agreement, agents within statute allowing service on a foreign corporation transacting business in the district by service on agent. *Wica, Inc.* v. *WWSW, Inc. et al.* (1951, 191 F. 2d 502, 89 U.S. App. D.C. 308).

Service of process on location supervisor of New Jersey corporation, who was in jurisdiction as agent or representative of defendant corporation and was conducting its business in discharge of its contractual obligations, gave reasonable assurance of notice to the corporation of impending suit and was proper. *Weinstein* v. *Ajax Distributing Co.* (D.C. Mun. App. 1955, 166 A. 2d 580).

3. Concealment by agent

Where writ of garnishment was served on secretary of garnishee, a foreign corporation, and secretary filed answers to interrogatories in garnishee's name, but the secretary was the judgment debtor and concealed fact of service for her own interest and prevented notice from reaching the garnishee, the service was not in compliance with spirit of this section providing that process against a foreign corporation may be served on agent of corporation, or on person conducting its business and the service would not support judgment against the garnishee. *Encyclopaedia Britannica* v. *Shannon* (1943, 133 F. 2d 397, 77 U.S. App. D.C. 125).

4. Constitutionality

This section is constitutional. *Hoffman* v. *Washington-Virginia R. Co.* (44 App. D.C. 418)

5. Contracts entered into or to be performed

District of Columbia statute making service upon officer of foreign corporation transacting business in District without place of business or resident agent therein effectual as to suits growing out of contracts entered into therein and statute providing that foreign corporation transacting business in District without certificate shall be deemed to have appointed commissioners its agents are to be read in pari materia, and, in respect to action on District contract, service on commissioners was valid. *Central Insurance Agency Co., Ins.* v. *Financial Credit Corp., et al.* (1963, 222 F. Supp. 627).

"It will be observed that the statute is not confined to general agency or an established custom of doing business, but it applies to a suit growing out of a contract 'entered into or to be performed, in whole or in part, in the District of Columbia.'" *Berkeley* v. *Culley* (42 App. D.C. 140).

The utilization of procedure outlined in this section for service in line of publication on nonresidents in action in rem, in causing service of written motion to have defendant adjudged in contempt for failure to pay permanent alimony to be made by deputy marshal upon defendant, resulting in service of notice in accordance with method provided in Fed. Rules Civ. Proc. rule 5(b), U.S. Code, title 28, Appendix, did not convert motion into a new action in personam wherein such procedure was unavailable. *Tilghman* v. *Tilghman* (1944, 57 F. Supp. 417).

6. Definitions

This section providing that, when a corporation shall "transact business" in District of Columbia without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in District shall be effectual, etc., uses quoted words as meaning "doing business". *Bilbrey* v. *Chicago Daily News* (1945, 57 F. Supp. 579).

7. Doing business

A Delaware corporation was not "doing business" in District of Columbia within federal venue statute or District of Columbia statute relating to service of process on foreign corporations doing business in District, notwithstanding that corporation employed vice president and four employees in District on permanent basis with combined monthly payroll of $10,000, where employees solicited no business in District. *R. Fandel and A. Fandel* v. *Arabian-American Oil Company* (1964, 231 F. Supp. 572).

Although Virginia railway corporation had "minimum contracts" with District of Columbia for purpose of service of process, jurisdiction would not be assumed where plaintiffs were not residents of District, their cause of action did not arise out of corporation's activities within

District, and evidence could be produced as easily, if not more easily, in another forum. *L. Byrd and J. D. Byrd* v. *Norfolk and Western Railway Company* (D.C. App. 1963, 194 A. 2d 651).

Indiana corporation which had its principal place of business in Minnesota but which maintained a resident agent in Washington, D.C., to trade with foreign governments through their representatives in the District, was "doing business" in the District for purposes of service in the District upon corporation's agent in action for alleged tortious breach of contract in the District. *Mutual International Export Co.* v. *NAPCO Industries, Inc.* (1963, 316 F. 2d 393, 114 U.S. App. D.C. 392).

A foreign corporation was "doing business" in District of Columbia for purpose of service of process in action against corporation for personal injuries allegedly caused in District by negligent manufacture of insecticide bomb, where corporation obtained orders in District with full knowledge that its products would be delivered in District and that injuries might occur in District, and such activities were continuous and systematic. *G. Key* v. *S. C. Johnson & Son, Inc.* (D.C. App. 1963, 189 A. 2d 361).

The test of whether foreign corporation is "doing business" in jurisdiction for purpose of service of process is one of practicality, reasonableness and fairness. *Id.*

The concept of "doing business" for purpose of service of process on foreign corporation has undergone an evolution; a mechanical approach, with emphasis on a warehouse here or an office there, is no longer proper: the problem is one essentially of accommodating the federal system, with its inherent jurisdictional limitations, to a unitary economic system with modern methods of marketing and distribution by which the corporation maintains a steady flow of goods into marketing area without the necessity of having an outlet in each jurisdiction. *Id.*

Canadian aircraft manufacturer which had main plant and offices in Canada and maintained single employee in District of Columbia, who served as liaison man with United States Government and whose principal duties were to transmit information about government's requirements and to keep in contact with government agencies and who had no authority to accept orders from any source or execute contracts, was not "doing business in the district" and service of process upon such employee in action for injuries sustained in an airplane crash allegedly caused by negligence of manufacturer was properly quashed. *R. H. Trasher et al.* v. *DeHavilland Aircraft of Canada Ltd.* (1961, 294, F. 2d 299, 111 U.S. App. D.C. 33).

Where foreign corporation was not licensed to do business in the District of Columbia, and maintained no office or telephone directory listing there, and did not operate manufacturing plants, warehouses, sales or administrative offices there, and its assistant secretary maintained office there solely for liaison with departments and agencies of federal government and was without authority to make commitments for or to accept orders for said corporation, corporation was not "doing business" in District of Columbia within statute governing service of process. *Weisblatt, Trading as King's Credit, etc.* v. *United Aircraft Corp., etc.* (D.C. Mun. App. 1957, 134 A. 2d 713).

In proceeding in the District of Columbia by judgment creditor to attach credits of judgment debtor in the hands of the latter's employer, where employer moved to quash attachment on ground that employer was foreign corporation not doing business in District within statute governing service of process, the court properly accepted and considered affidavit of one of employer's officers, in view of the rule. *Id.*

Where New Jersey corporation had authorized representative in jurisdiction, who not only had power to solicit, but to negotiate and contract with businessmen there, and corporation had supplied him with its printed form of contract and authorized him to sign as distributor, as well as to accept payment for its machines and to issue its form of official receipt, and in addition had machine location supervisor in jurisdiction, such corporation was doing business in the jurisdiction within meaning of statute authorizing service of process on any officer or agent or employee of such foreign corporation. *Weinstein* v. *Ajax Distributing Co.* (D.C. Mun. App. 1955, 116 A. 2d 580).

Under this section providing that service may be made upon person conducting the business of a foreign corporation doing business in the District, service upon salesman who, although acting for other companies as well, sold foreign corporation's products to local grocers, he being the only person in District authorized to act for foreign corporation, was sufficient. *District Grocery Stores, Inc.* v. *Brunswick Quick Freeze Co.* (D.C. Mun. App. 1954, 106 A. 2d 134).

Foreign finance corporation purchasing commercial paper discounted by seller in jurisdiction of seller is not doing business in jurisdiction of seller and is not amenable to process therein. *Bahlke* v. *Byram* (D.C. Mun. App. 1951, 78 A. 2d 384).

An action by a foreign corporation against another foreign corporation may be brought in District of Columbia when the defendant has business there. *Guilford Granite Co.* v. *Harrison Granite Co.* (23 App. D.C. 1).

A newspaper corporation which, in addition to its chief business of publishing a newspaper in New York, also maintains a permanent office in the District of Columbia, is doing business in the District within terms of statute so that service of process may be had. *Ricketts* v. *Sun Printing & Pub. Co.* (27 App. D.C. 222).

Maintenance of an office in the District for the performance by the general officers of their duties of management and supervision of the affairs of the corporation amounts to doing business therein, especially when its president, secretary, and treasurer transacted business incidentally relating to corporate purposes. *Ferguson Contracting Co.* v. *Coal & Coke R. Co.* (33 App. D.C. 159).

Service on corporation was not proper when their room in the building had been abandoned and used as a storage place, and the officers had left the District. *Mitchell Min. Co.* v. *Emig* (35 App. D.C. 527).

When scales corporation not only negotiated sales, but looked after deliveries, collections, and complaints, service upon agent was proper under part of § 1537 of the 1901 Code (this section). *Toledo Computing Scales Co.* v. *Miller* (38 App. D.C. 237).

Service was not proper on corporation that had no office in the District of Columbia, at the time of service, for the transaction of business, and was not doing business therein; in fact it was not doing business anywhere, in the ordinary sense of the term, its purpose having been accomplished by issue of stock for purchase of patent, which formed the sole basis of its capitalization. *Doremus* v. *National Cotton Impr. Co.* (39 App. D.C. 295).

Service was proper upon agent of foreign corporation that was engaged in selling tickets for transportation between New York and Europe when such corporation had office in District of Columbia. *Windell* v. *Holland American Line* (40 App. D.C. 1).

"In this section Congress clearly has recognized the distinction made by the Supreme Court of the United States between the doing of business within a state at a place regularly established therefor, and the intermittent transaction of business through agents who come and go. Notwithstanding that a corporation is deemed to be a resident of the state of its creation, if it goes within another State or jurisdiction, and there establishes a place of business from which, through its authorized agents, its business is transacted, it must be regarded as also within that jurisdiction." *Hoffman* v. *Washington-Virginia R. Co.* (44 App. D.C. 418).

The agent or person contemplated by the Code must be possessed of such authority as will justify the conclusion that his principal, by him, is in the District. *Chase Bag Co.* v. *Munson S.S. Line* (1924, 295 F. 990, 54 App. D.C. 169).

Solicitation of business by railroad having no line in District is not "doing business." *Cancelmo* v. *Seaboard A.L.R. Co.* (1926, 12 F. 2d 166, 56 App. D.C. 225). See, also, *Knobel* v. *Seaboard A.L.R. Co.* (1926, 12 F. 2d 169, 56 App. D.C. 228).

An express company, doing business in the District, may be sued there for damages to a shipment, although shipment began and ended in other states; nor does this cause an unlawful burden on interstate commerce. *Harris* v. *American R. Exp. Co.* (1926, 12 F. 2d 587, 56 App. D.C. 264, certiorari denied 47 S. Ct. 92, 273 U.S. 695, 71 L. Ed. 845).

Having selling agency contract constitutes "doing business." *Carroll Elec. Co.* v. *Freed-Eisemann Radio Corp.* (1931, 50 F. 2d 993, 60 App. D.C. 228).

A foreign newspaper maintaining correspondent in District constitutes "doing business." *Neely* v. *Philadelphia Inquirer Co.* (1933, 62 F. 2d 873, 61 App. D.C. 334).

The mere collection of news in Washington and its transmission to a paper published outside the District of Columbia is not "doing business" within meaning of statute. *Layne* v. *Tribune Co.* (1934, 71 F. 2d 223, 63 App. D.C. 213, certiorari denied 55 S. Ct. 83, 293 U.S. 572, 79 L. Ed. 670).

A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent only if it is doing business within the state in such manner as to warrant the interference that is present there. *Philadelphia & Reading Co.* v. *McKibbin* (1917, 37 S. Ct. 280, 243 U.S. 264, 61 L. Ed. 710). See, also, *Whitaker* v. *Macfadden Publications* (1939, 105 F. 2d 44, 70 App. D.C. 165).

The trial court was without jurisdiction and the original judgment was void where foreign corporation was never engaged in business in the District of Columbia, and has no officer or agent in the District upon whom process could be served. *Consolidated Radio Artists* v. *Washington Section* (1939, 105 F. 2d 785, 70 App. D.C. 262).

The mere insuring of residents of a foreign state, the contract of insurance being made and carried out in the home state, does not constitute "doing business" in the state of the insured. *Sasnett* v. *Iowa State Traveling Men's Assn.* (C.C.A. 8, 90 F. 2d 514, certiorari denied 58 S. Ct. 30, 302 U.S. 711, 82 L. Ed. 549).

The fundamental principle underlying the "doing business" concept, rendering foreign corporation amenable to process is the maintenance within jurisdiction of a regular, continuous course of business activities, whether or not it includes the final stage of contracting and if, in addition to regular course of solicitation, other business activities are carried on, the corporation is "present" for jurisdictional purposes. *Frene* v. *Louisville Cement Co.* (1943, 134 F. 2d 511, 77 U.S. App. D.C. 129, 146 A.L.R. 926).

In determining whether acts of foreign corporation's agents constitute "doing business" in jurisdictional sense, the test of agent's authority is not found in inquiry whether he is required to do questioned act by formal instructions of corporation or his failure to do it would be breach of duty to corporation, but rather in nature of the act, in relation to corporation's business, and whether the corporation has assented to it either by explicit modification of original instructions or impliedly by a course of conduct inconsistent with the limitations they impose. *Id.*

Where foreign corporation's employee was not required by original authorization to do more than solicit orders in court's territorial jurisdiction but to create good will and with corporation's consent employee visited jobs where corporation's product was being used, made suggestions for solving difficulties, received complaints, forwarded them to corporation's home office and aided generally in preventing and clearing up difficulties and the corporation accepted benefits derived from such activities, the employee's activities constituted "doing business" or "transacting business" so as to make the corporation amenable to process. *Id.*

A foreign corporation is amenable to process to enforce a personal liability only if it is doing business within state to such extent as to warrant inference that it is present there. *Bilbrey* v. *Chicago Daily News* (1945, 57 F. Supp. 579).

An Illinois newspaper publishing corporation maintaining an office in Washington and a "Washington correspondent" in charge was not "doing business" within the District so as to give court of District jurisdiction by service of process on such correspondent. *Id.*

The mere maintenance of an office for solicitation of business within District does not subject foreign corporation to process of course of District as "doing business" therein. *Atlantic Coast Line R. Co.* v. *Goldberg* (D.C. Mun. App. 1944, 39 A. 2d 563).

Where railroad, which had no tracks in District but whose cards continued into District over tracks of another railroad which controlled and operated them, maintained offices in District for solicitation of business and for conduct of its dining car service, it was "doing business" in District, and service of process on its agent within District was valid. *Id.*

Mere solicitation of orders by foreign corporation's agent does not constitute "doing business" within this section governing service of process. *Mueller Brass Co.* v. *Alexander Milburn* (1946, 152 F. 2d 142, 80 U.S. App. D.C. 274).

Where foreign corporation engaged almost entirely in manufacture of war materials for the United States maintained representative in Washington, D.C., with primary duty of maintaining contact with various government agencies in respect to reports, allocations, and directives relating to the corporation's requirements for materials and incidentally with duty of soliciting orders but without authority to make any binding commitment, corporation maintained office for the representative in Washington and its name was carried in telephone directory, city directory, and in a trade catalog, the corporation was not "doing business" within this section governing service of process. *Id.*

Under this section, District Court of United States for District of Columbia has jurisdiction over corporations which are domestic in a local sense and over those which, by doing business, are present in the District of Columbia. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (1946, 155 F. 2d 864, 81 U.S. App. D.C. 124).

Where Tennessee Valley Authority was organized as government agency under 16 U.S.C. § 831g providing that it should be resident of northern judicial district of Alabama within 28 U.S.C. former § 112, now covered by §§ 1391, 1401, 1693, 1695, but Authority maintained office in District of Columbia, the Authority was not "doing business" in the district in jurisdictional sense and did not waive venue. *Id.*

"Doing business" is equivalent to "transacting business" and generally statutes prohibiting a foreign corporation from doing business until it has filed a certificate, etc., have reference to a continuation in some form of business and do not apply where a foreign corporation does a single act of business within the state. *Frye* v. *Batavia (N.Y.) Veterans Administration Emp. Federal Credit Union No. 189, Inc.* (1948, 8 F.R.D. 334).

It can well be that many corporations have representatives in the City of Washington solely for the purposes of transacting business with the government and this would not constitute the doing of business within the District under the statute; however, when a corporation maintains an office and otherwise holds itself out to the public generally as being present in the city for the purpose of doing business, it submits itself to the jurisdiction of the courts of the District. *State of Maryland* v. *Eastern Airlines* (1948, 81 F. Supp. 345).

A Maryland corporation operating as a private school, with all its educational activities conducted in Maryland, is not amenable to service under statute despite the fact that it maintained bank accounts in the District, made purchases or advertised in local papers and was listed in the local telephone directory. *Lichtenberg* v. *Bullis Schools, Inc.* (D.C. Mun. App. 1949, 68 A. 2d 586).

Maryland corporation, solely owned by the U.S. and doing business in the District of Columbia, may be sued in the District in the manner provided by law. *Hood* v. *Defense Homes Corp.* (1949, 83 F. Supp. 365).

The term "doing business" is not one possessed of but a single meaning in the law but is used in connection with many different situations and must be characterized and defined according to the context and what constitutes doing business for purpose of taxation may be very different from doing business for purpose of process and subjection by foreign corporation to the jurisdiction of local courts. *Goldberg* v. *Southern Builders, Inc.* (1950, 184 F. 2d 345, 87 U.S. App. D.C. 191).

It is clear that the foreign corporation's contacts with the District have been regular and systematic, since its books, records, and offices all are in the District and under such circumstances, a foreign corporation was doing business in the District and upon service of process, was subject to the jurisdiction of the district court. *Id.*

8. General appearance

Coupling of a motion to dismiss with a motion to quash service of process did not constitute a "general appearance" by foreign corporation and thus give court jurisdiction. *Frye* v. *Batavia (N.Y.) Veterans Administration Emp. Federal Credit Union No. 189* (1948, 8 F. R.D. 334).

The fact that affidavits filed by counsel for nonresident corporation in connection with motion to quash service of process also went to merits did not amount to a "general appearance" so as to give the court jurisdiction. *Id.*

9. Independent contractor

Evidence showed that foreign corporation was not doing business in the District of Columbia, and service upon independent contractor of the corporation did not bring such corporation before the court. *Read* v. *LaSalle Extension University* (1946, 156 F. 2d. 575, 81 U.S. App. D.C. 177).

10. Partnerships

Statute relating to foreign corporations does not apply to partnerships. *Matson* v. *Mackubin* (1932, 57 F. 2d 941, 61 App. D.C. 102).

11. Pending bankruptcy proceeding

No effective service in a creditor's suit for appointment of receiver of company whose only asset is a claim against the United States Shipping Board and Emergency Fleet Corporation can be made owing to a bankruptcy proceeding begun in another court having full jurisdiction. *Zibell* v. *Meacham & Babcock Shipbldg. Co.* (1927, 16 F. 2d 330, 56 App. D.C. 385).

12. Pleading

To raise the question whether summons was served on proper representative, motion to quash service is proper. *Bloedorn* v. *Washington Times Co.* (1937, 89 F. 2d 835, 67 App. D.C. 91). See, also, *Read* v. *LaSalle Extension University* (1946, 156 F. 2d 575, 81 U.S. App. D.C. 177).

13. Purpose

The statute is remedial in purpose and its object is quite clear—to enable the District of Columbia courts to exercise jurisdiction over foreign corporations which engage in business activities in the District. *Goldberg* v. *Southern Builders, Inc.* (1950, 184 F. 2d 345).

14. Service upon officer

Under District of Columbia law, service upon corporation in tort action for personal injuries which occurred in New York was properly made on chief clerk at corporation's offices within district if corporation was "doing business" within district. *O. F. Collins et al.* v. *New York Central System etc.* (1963, 327 F. 2d 880, 117 U.S. App. D.C. 182).

Where railroad as defendant in action for personal injuries which occurred in New York filed motion to dismiss action in federal district court in District of Columbia and quash service made on railroad's chief clerk at offices within district on ground that railroad was not doing business within district, action on motion to dismiss should have awaited railroad's answers to interrogatories which sought fuller disclosure as to whether railroad was "doing business" within district. *Id.*

President of Maryland corporation which did business in District of Columbia as independent manufacturers' representative and who, without obligation, as accommodation to one of his suppliers had made certain inquiries and delivered certain forms for it was not an "officer or agent or employee" of such other corporation within district statute providing for service upon officer, agent or employee of foreign corporation transacting business in district. *A. P. De Sanno & Sons, Inc.* v. *M. G. Brown, D. E. Wooster et al.* (1963, 313 F. 2d 898, 114 U.S. App. D.C. 217).

Since automobile importer, whose wholesale distributor had its principal place of business in District of Columbia, had a continuing contact with District, it was subject to service, in suit under Automobile Dealers Franchise Act, pursuant to District Code section providing for service on agent of foreign corporation or person conducting its business; and under that section, importer could be served by making service upon its distributor's president. *Fiat Motor Co., Inc.* v. *Alabama Imported Cars, Inc.* (1961, 292 F. 2d 745, 110 U.S. App. D.C. 252).

Since automobile importer, whose wholesale distributor had its principal place of business in District of Columbia, had a continuing contact with District, it was subject to service, in suit under Automobile Dealers Franchise Act, pursuant to District Code section providing for service on agent of foreign corporation or person conducting its business; and under that section, importer could be served by making service upon its distributor's president. *Fiat Motor Co., Inc.* v. *Alabama Imported Cars, Inc.* (1961, 292 F. 2d 745, 110 U.S. App. D.C. 252).

In action for injuries sustained on defendant foreign corporation's State Fair premises, district court correctly granted defendant's motion to quash service of process in District of Columbia on corporation's director residing therein, in absence of sufficient showing that corporation was doing business in District or that such director was corporation's agent. *Grimes* v. *Maryland State Fair, Inc.* (1956, 230 F. 2d 825, 97 U.S. App. D.C. 275, certiorari denied 77 S. Ct. 102, 352 U.S. 882, 1 L. Ed. 2d 80).

A foreign corporation is amenable to process to enforce a personal liability, in absence of consent, only if it is doing business within jurisdiction in such manner as to warrant inference that it was present there, and even if it is doing business within jurisdiction, process will be valid only if served on some authorized agent. *Bahlke* v. *Bryan* (D.C. Mun. App. 1951, 78 A. 2d 384).

Where defendant seller was neither an agent, officer or employee of finance corporations and only relation between finance corporations and seller was by virtue of a contract whereby finance corporations agreed to buy certain conditional sales contracts and commercial papers from seller and finance corporations were not doing business in District of Columbia, buyer's service of process made on seller as agent of defendant finance corporations, in action based on alleged fraud in sale of two automatic popcorn machines and usury in charges on purchase money installment note given seller and discounted with defendants, in part payment of machines, was properly quashed. *Id.*

When officers of corporation are not in the District in their official or representative capacity and it is not shown that they are clothed with authority, the corporation is not liable to suit in a jurisdiction foreign to its creation. *Ambler* v. *Archer* (1 App. D.C. 94).

15. Statute must be strictly followed

When appellant had closed its office and removed its property from the District and there were no agents in the District, service of summons could not be secured, and statutes pertaining to such service must be strictly followed. *New York Continental Filtration Co.* v. *Karr* (31 App. D.C. 459).

§ 13–335. Service by publication on domestic or foreign corporations.

In an action specified by section 13–336, when process can not be served upon a domestic or foreign corporation, the corporation may be proceeded against as a nonresident defendant, by notice by publication. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–104 (Mar. 3, 1901, ch. 854, § 112, 31 Stat. 1207).

A provision is inserted limiting the section to actions specified in section 13–336, because of the decision in *United States* v. *Matthews*, C.A.D.C. 1955, 221 F. 2d 837, that this section is so limited and does not apply in actions in personam.

Other methods of service on domestic and foreign corporations are found in chapter 9 of Title 29 of the D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Domestic corporation, process on

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in

District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States* v. *Mathews* (1955, 221 F. 2d 837 95 U.S. App. D.C. 282).

§ 13–336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.

(a) In actions specified by subsection (b) of this section, publication may be substituted for personal service of process upon a defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons.

(b) This section applies only to:

(1) actions for partition;

(2) actions for divorce or annulment;

(3) actions by attachment;

(4) actions for foreclosure of mortgages and deeds of trust;

(5) actions for the establishment of title to real estate by possession;

(6) actions for the enforcement of mechanics' liens, and other liens against real or personal property within the District; and

(7) actions that have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–108 (Mar. 3, 1901, ch. 854, § 105, 31 Stat. 1206; Apr. 19, 1920, ch. 153, 41 Stat. 556; June 20, 1949, ch. 230, 63 Stat. 214).

Section is based on part of section 13–108. For remainder of that section, see section 13–337 herein.

The provisions of this chapter on service other than personal service are statutes of the United States that are applicable under Rule 4(e) of the Federal Rules of Civil Procedure.

Other provisions for service on absent defendants in actions concerning property are found in 28 U.S.C. § 1655.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Service of process on nonresident owner of motor vehicles, see, § 40–423.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. In general

"Constructive service is a statutory proceeding, and each step required to be taken is essential to the validity of the service." *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3).

Generally, mere casual and occasional acts do not furnish a sufficient basis for assertion of jurisdiction of person in cases of nonresidents. *Frene* v. *Louisville Cement Co.* (1943, 134 F. 2d 511, 77 U.S. App. D.C. 129, 146 A.L.R. 926).

2. Adoption proceeding

Where summons in adoption proceeding was delivered to child's legal custodian in another jurisdiction, his letter to clerk of court stating that he was not interested in outcome of suit and that letter was to be treated as his answer to the summons was not an "appearance," but a mere acknowledgment of summons. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

In proceeding for adoption of child who was in custody of legal custodian in another jurisdiction, service of process upon custodian in that jurisdiction, not being authorized by statute, was invalid. *Id.*

3. Alien property custodian

Supreme Court of District had jurisdiction over suit against Secretary of Treasury to determine right to fund created by Alien Property Custodian. *Doerschuck* v. *Mellon* (1932, 55 F. 2d 741, 60 App. D.C. 383).

Court had jurisdiction to assemble parties in suit against Alien Property Custodian for purpose of determining title to claimed property. *Pilger* v. *Sutherland* (1932, 57 F. 2d 604, 61 App. D.C. 84).

4. Alimony

Any attempt to enforce the payment of an order for alimony and suit mony pendente lite in a foreign jurisdiction is in the nature of an action personam, and can be maintained only through personal service upon the defendant. *Johnston* v. *Johnston* (1935, 74 F. 2d 774, 64 App. D.C. 87).

Fact that written motion to have defendant adjudged in contempt for failure to pay permanent alimony awarded in judgment for absolute divorce was served upon defendant personally instead of attorney, without obtaining in advance an order of court authorizing such service, did not invalidate the service. *Tilghman* v. *Tilghman* (1944, 57 F. Supp. 417).

A decree for payment of alimony against a non-resident brought before the court by constructive or extra-territorial service is void except as to property which is within the court's jurisdiction, and which has been specifically proceeded against in the divorce action. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

Order of District Court of District of Columbia directing resident of Virginia who was personally served in Virginia, to pay alimony pendente lite, was "in personam" and void for lack of jurisdiction, in absence of any acts by nonresident to subject himself to court's authority, and in absence of a claim of, right to, or lien on any personalty in District of Columbia. *Id.*

Use of service by publication or service outside of District of Columbia was authorized where divorced husband resided in Ohio, and wife, who sought support for herself and minor child, also sought to subject former marital home in District to support payments awarded and to have determined her property right in the home and to obtain injunction against the sale. *S. S. Wagner* v. *C. A. Wagner* (1961, 293 F. 2d 533, 110 U.S. App. D.C. 345).

Substituted service upon husband, who was residing in Ohio, of complaint wherein wife sought determination of property rights of husband's real estate in District of Columbia was sufficient to give court in District of Columbia power to enforce her rights without attachment of the property at time of filing suit. *Id.*

5. Attachment

Although this section authorizes publication in cases of attachment, an attachment can not issue under § 445 (§ 16–301) against the property of a decedent for a debt due by him, when the estate is being administered in another jurisdiction. *Jordan* v. *Landram* (35 App. D.C. 89).

Service by publication is not good in actions in personam on nonresidents not found within jurisdiction unless property of party within jurisdiction is the subject of attachment. *Indemnity Ins. Co. of North America* v. *Smoot* (1946, 152 F. 2d 667, 80 U.S. App. D.C. 287, 163 A.L.R. 498, certiorari denied 66 S. Ct. 981, 328 U.S. 835, 90 L. Ed. 1611).

6. Attorney and client

In proceedeing in his own name by attorney retained on contingent fee basis to realize on judgment which he had obtained establishing client's right to recover upon client's subsequent failure or refusal to enforce

collection of the judgment, client should be made party defendant, and court might, if it considered it advisable, require that, in lieu of newspaper publication, personal service provided for by statute be had on client. *Falcone and Millstein* v. *Hall et al.* (1956, 235 F. 2d 860, 98 U.S. App. D.C. 363).

7. Construction with other laws

Personal service of process on non-resident defendant in the state where he resided was not invalid because prior thereto a summons had not been issued and returned "Not to be found" in the District of Columbia and because his non-residence had not been proved by affidavit according to § 13–109 dealing with service on a non-resident by publication, since that section has no application to provision of this section relating to personal service on a non-resident. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

8. Dismissal

Where complaint was not predicated solely on establishment of a lien upon fund held by Secretary of Treasury for benefit of non-resident defendant but also sought injunction and specific performance against non-resident personally, fact that order of publication against non-resident defendant was required to be vacated as not within purview of this section did not entitle non-resident defendant to dismissal of the action as to him, since if non-resident defendant should be personally served court would have jurisdiction to give appropriate relief. *Dunn* v. *Parker* (1948, 8 F.R.D. 373).

9. Divorce

This section which authorizes substituted service in suits for divorce does not apply in suits for maintenance. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *Gardner* v *Gardner* (D.C. Mun. App. 1958, 140 A. 2d 179).

10. Domestic corporation

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States* v. *Mathews* (1955, 221 F. 2d 837, 95 U.S. App. D.C. 282).

11. Maintenance

A suit for maintenance is a proceeding in personam, and this section, authorizing substituted service does not apply. *Vertner* v. *Vertner* (1934, 70 F. 2d 783, 63 App. D.C. 179).

12. Personal property

Quaere: Whether a defendant in a contract action, by complying with the conditions of § 1531 (§ 13–217), can convert the same into one having for its "immediate object the enforcement * * * of any lawful right * * * to * * * any personal property within the jurisdiction," so as to authorize service by publication under this section. *Dexter* v. *Lichliter* (24 App. D.C. 222).

A check or draft in the hands of the Treasurer of the United States, in which the United States has no longer any interest is "personal property" within the meaning of this section. *Jones* v. *Rutherford* (26 App. D.C. 114).

A treasury check held by the Government was "personal property" within meaning of statute. *Morgenthau* v. *Fidelity & Deposit Co.* (1938, 94 F. 2d 632, 68 App. D.C. 163).

A trust res in the form of a deposit in a local bank is personal property within the meaning of this section. *Green* v. *Brophy* (1940, 110 F. 2d 539, 71 App. D.C. 299).

Money paid into United States Treasury by the Mexican Government is "personal property" within meaning of statute. *American-Mexican Claims Bureau, Inc.* v. *Morgenthau* (1939, 26 F. Supp. 904).

Suit against trustee and beneficiary of trusts by beneficiary's divorced wife to establish on behalf of herself and minor child interest in trust funds, located within District of Columbia, and proceeds thereof, was for purpose of enforcing or establishing a lawful right against "property" within this section, so that process was properly served by publication on beneficiary who was absent from district. *Buchanan* v. *National Sav. & Trust Co.* (1945, 146 F. 2d 13, 79 U.S. App. D.C. 278).

13. Publication of process

Statutory expression that service of process in a divorce action may be had "by publication" means by publication or its statutory equivalent, and therefore service of process on a nonresident defendant outside the district, in a divorce action, was valid. *Wiggins* v. *Wiggins* (D.C. Mun. App. 1957, 135 A. 2d. 154).

14. Quashing service

In a suit for an accounting and discovery and for appointment of receiver, where verified complaint alleged that defendant was resident of District of Columbia, but summons was served on defendant in Virginia and the return, verified by a Virginia sheriff, alleged that defendant "is a nonresident of the District of Columbia," denial of defendant's motion, made on special appearance, to quash service of process was error. *Contella* v. *Clayton* (1944, 140 F. 2d 469, 78 U.S. App. D.C. 291).

15. Reversion interest

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and possessed a vested reversion and in May, 1960, would receive a portion of the trust assets on partial termination of the trust, divorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who has personal property within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. *King, etc.* v. *Fay et al.* (1958, 169 F. Supp. 934).

16. Revival of judgment

The service of notice of motion to revive a judgment obtained in Municipal Court of District of Columbia could be made upon a judgment debtor in Maryland upon showing that he was a non-resident, without first having a summons issued in the District of Columbia and returned "not to be found" and the debtor's non-residence established by affidavit. *White* v. *O. R. Evans & Bro.* (1947, 157 F. 2d 857, 81 U.S. App. D.C. 272).

17. Right as statutory

Notice by publication is in derogation of the common law, and it can be availed of only when a statute permits. *Cooper* v. *Burton* (1942, 127 F. 2d 741, 75 U.S. App. D.C. 298.

18. Situs of the "claim"

The situs of the claim alone does not authorize notice to a nonresident defendant by publication under the code. *Lindberg* v. *Humphrey* (1923, 289 F. 901, 53 App. D.C. 243).

19. United States

The federal District Court for District of Columbia lacked jurisdiction of action for declaratory judgment that Secretary of Interior and Indian woman were trustees for plaintiff of certain lands in Indian allotments wherein Indian defendant acquired interests through descent and will where United States did not consent to be sued, if lands were still governed by General Allotment Act, and Indian defendant was not personally served with process in District. *Spriggs, Sr.* v. *McKay, Secretary of the Interior* (1956, 228 F. 2d 31, 97 U.S. App. D.C. 60).

20. Vacating order

Plaintiff's action so far as it related to establishment of a lien upon a fund held by Secretary of Treasury for benefit of non-resident defendant under Settlement of Mexican Claims Act, 22 U.S.C. former § 668(b), did not come within purview of this section providing for publication as to non-residents, and, hence, non-resident

defendant's motion to vacate order of publication would be granted. *Dunn* v. *Parker* (1948, 8 F.R.D. 373).

21. Waiver by appearance

When the jurisdiction over the defendant rests upon her having voluntarily appeared and answered the bill without objection, the decree binds her. *Houston* v. *Ormes* (1920, 40 S. Ct. 369, 252 U.S. 469, 64 L. Ed. 667).

A general appearance waives irregularities in obtaining the order of publication. *Landram* v. *Jordon* (25 App. D.C. 291, affirmed 27 S. Ct. 17, 203 U.S. 56, 51 L. Ed. 88).

§ 13–337. Personal service outside District in lieu of publication.

(a) In actions specified by section 13–336, personal service of process may be made on a nonresident defendant out of the District, and the service has the same effect, and no other, as an order of publication duly executed.

(b) The service may be made by any person not a party to or otherwise interested in the subject-matter in controversy. The return shall be made under oath in the District of Columbia, unless the person making the service is a sheriff, deputy sheriff, marshal, or deputy marshal, authorized to serve process where service is made. The return must show the time and place of service and that the defendant so served is a nonresident of the District of Columbia.

(c) The cost and expense of such service of process out of the District shall be borne by the party at whose instance it is made and may not be taxed as part of the costs in the case; but where the service of process is made by an authorized officer of the law specified by this section, the actual and usual cost of the service of process shall be taxed as a part of the costs in the case. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–108 (Mar. 3, 1901, ch. 854, § 105, 31 Stat. 1206; Apr. 19, 1920, ch. 153, 41 Stat. 556; June 20, 1949, ch. 230, 63 Stat. 214).

Section is based on part of section 13–108. For remainder of that section, see section 13–336 herein.

Changes are made in phraseology and arrangement.

§ 13–338. Prerequisites for order of publication.

An order for the substitution of publication for personal service may not be made until:

(1) a summons for the defendant has been issued and returned "Not to be found," and

(2) the nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–109 (Mar. 3, 1901, ch. 854, § 106, 31 Stat. 1206).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction with other laws 1
Diligent effort 2
Pluries summons 3

1. Construction with other laws

Personal service of process on non-resident defendant in the state where he resided was not invalid because prior thereto a summons had not been issued and returned "Not to be found" in the District of Columbia and because his non-residence had not been proved by affidavit according to this section dealing with service on a non-resident by publication, since this section has no application to provision of § 13–108 relating to personal service on a nonresident. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

2. Diligent effort

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *Gardner* v. *Gardner* (D.C. Mun. App. 1958, 140 A. 2d 179).

3. Pluries summons

Order of publication cannot be had before return day named in summons, and this rule applies as well to pluries summons. *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3). See, also, *Plumb* v. *Bateman* (2 App. D.C. 156).

§ 13–339. Form of order of publication.

An order of publication shall be in the following or an equivalent form:

United States District Court for the District of Columbia.

AB, plaintiff,
versus
CD, defendant. } In ———. No. ———

The object of this action is to (state it briefly).

On motion of the plaintiff, it is this ——— day of ———, A.D. ———, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

———

Judge.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–110 (Mar. 3, 1901, ch. 854, § 107, 31 Stat. 1206; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

This form is made to conform to present terms and procedure by changing "complainant" to "plaintiff", and "suit" to "action".

§ 13–340. Manner of publication—Mailing of copy—Default—Appointment and compensation of guardian and attorney.

(a) An order of publication shall be published at least once a week for three successive weeks, or oftener, or for such further time as the court orders.

(b) An order, judgment or decree may not be entered against an absent or nonresident defendant upon proof of notice by publication, unless the plaintiff, his agent, or attorney files in the action an affidavit showing that at least twenty days before applying for the order, judgment or decree he mailed, postpaid, a copy of the advertisement, directed to the party therein ordered to appear, at his last known place of residence, or that after diligent effort he has been unable to ascertain the last place of residence of the party.

(c) On failure of the defendant to appear in obedience to the notice within the time stated therein, a judgment or decree by default may be entered.

(d) If the absent or nonresident defendant is an infant, the provisions of the rules of court concerning guardians ad litem and default judgments shall

apply, and the court may assign counsel to represent the infant in the manner provided by subsection (a) of section 13–332.

(e) If the absent or nonresident defendant is non compos mentis, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court shall assign an attorney to represent the defendant, whose compensation shall be paid by the plaintiff, or out of the estate of the defendant, at the discretion of the court. (Dec. 23, 1963, 77 Stat. 515, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 13–111, 13–112 (Mar. 3, 1901, ch. 854, §§ 108, 109, 31 Stat. 1206, 1207; June 30, 1902, ch. 1329, 32 Stat. 523).

In subsecs. (d) and (e), the provisions making applicable the provisions of the rules of the court concerning guardians ad litem and default judgments are substituted for the provision in section 13–111 of D.C. Code, 1961 ed., that, with respect to an infant, the court shall appoint a guardian ad litem, and for the provision in section 13–112 thereof, that, with respect to a defendant non compos mentis, "no decree or judgment shall be passed unless the cause is fully proved". For example, Rules 17(c) and 55(b)(2) of the Federal Rules of Civil Procedure, and corresponding rules in other courts (see Rules 17(b) and 55(b) of the civil rules of the Court of General Sessions) govern the appointment of guardians ad litem for infants and incompetent persons, and provide that a judgment shall not be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other representative who has appeared therein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Diligent effort 1
Domestic corporation 2
Sufficiency 3

1. Diligent effort

Dismissal of wife's divorce action based on desertion on ground that wife had not offered satisfactory proof of mailing of publictaion to last known residence of husband was improper where address to which publication had been sent was, to wife's knowledge, last place at which husband had lived and efforts to locate husband were persistent and diligent. *C. S. McIntyre* v. *J. D. McIntyre* (D.C. Mun. App. 1961, 176 A. 2d 238).

Even if wife did not succeed in accurately establishing husband's most recent place of residence, evidence established that she had diligently tried to ascertain it before bringing action for absolute divorce on ground of desertion. *Id.*

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *Gardner* v. *Gardner* (D.C. Mun. App. 1958, 140 A. 2d 179).

2. Domestic corporation

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States* v. *Mathews* (1955, 221 F. 2d 837, 95 U.S. App. D.C. 282).

3. Sufficiency

Two publications in each of four consecutive periods of seven days from date of order of publication satisfy requirement that publication be twice a week for period of not less than four weeks. *Leach* v. *Burr* (1903, 23 S. Ct. 993; 188 U.S. 510, 47 L. Ed. 567).

§ 13–341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.

(a) When a person would be a proper party to a judicial proceeding if living, and upon allegation under oath and proof satisfactory to the court that it is unknown whether he is living or dead, he may be proceeded against as if he were living, and with like effect, if a representative of or claimant under him does not intervene in the action before final determination thereof, after notice by publication as in the case of nonresident parties.

(b) When a person who would have been a proper party to a judicial proceeding is dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees are unknown, the unknown persons may be described as the heirs or devisees of the person who, if living, would be the proper party. Notice shall be given by publication to them according to that description, and the same proceedings shall be had against them as are had against nonresident defendants, except that:

(1) the notice shall be published at least twice a month for such period, not less than three months without good cause shown, as the court orders, and the notice shall require the parties to appear on or before the day fixed in the notice to appear; and

(2) an order, judgment or decree may not be entered against the parties unless the court is satisfied that due diligence has been used to ascertain the unknown heirs.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–113 (Mar. 3, 1901, ch. 854, § 110, 31 Stat. 1207; June 30, 1902, ch. 1329, 32 Stat. 524).

In par. (1) of subsec. (b), words "on or before the day fixed in the notice to appear" are substituted for "on or before the first rule day occurring after the expiration of such prescribed period". Under present local court practice, rule days have been abolished.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Intervention

In proceeding involving competing claims to interstate's estate, wherein service by publication was authorized on unknown heirs and next of kin of intestate and all others concerned, allowing additional claimants to intervene after date set therefor in service by publication but prior to entry of a final decree did not constitute an abuse of trial court's discretion. *Collins et al.* v. *O'Brien et al.* (1953, 208 F. 2d 44, 93 U.S. App. D.C. 152, certiorari denied 74 S. Ct. 640, 347 U.S. 944, 98 L. Ed. 1092, rehearing denied 74 S. Ct. 776 347 U.S. 970, 98 L. Ed. 1111).

Chapter 5.—COUNTERCLAIMS

Sec.
13–501. Counterclaim by way of set-off as an action by defendant.
13–502. Effect of assignment.
13–503. Action against principal and sureties.
13–504. Action by trustee.
13–505. Action by or against executor or administrator.

§ 13–501. Counterclaim by way of set-off as an action by defendant.

In a civil action, a defendant who files a counterclaim by way of set-off shall be deemed to have brought an action at the time of filing the counter-

claim for the matters mentioned therein. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1903 (Mar. 3, 1901, ch. 854, § 1565, 31 Stat. 1423; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Words "counterclaim by way of set-off" are substituted for "plea of set-off", and, in another place, "counterclaim" is substituted for "plea", to conform with court procedural rules. See Rule 13 of the Federal Rules of Civil Procedure, and Rule 13 of the civil rules of the Court of General Sessions, the latter being patterned upon the former. In the first substitution referred to, the reference to "set-off", although not used in the rules mentioned, is retained to restrict the scope of this section to that contemplated by section 16–1903 of D.C. Code, 1961 ed., from which this section is derived. Apparently, section 16–1903 barred the set-off if the statute of limitations had run after plaintiff had brought his action but before defendant had filed the plea of set-off; but it had no effect on the filing of a plea of recoupment, which was a common-law right, in contrast with set-off, which was strictly a statutory right. The general rule for recoupment was that if plaintiff's action was timely, so was the defendant's plea of recoupment, since the recoupment claim, as distinguished from a claim of set-off, arose from the same general contract. See *Durant* v. *Murdock*, 3 App. D.C. (1894) 114, 124–125; *Sullivan* v. *Hoover* (D.D.C. 1947), F.R.D. 513.

The provision "but it shall not be necessary that the amount of the claim so sought to be set off shall be such that the court would have jurisdiction of an original action to recover the same" is omitted as obsolete. See sections 11–961(a)(b)(3) and 11–962 herein. For the same reason, the proviso at the end of section 16–1903 of D.C. Code, 1961 ed., "*Provided*, that nothing herein contained shall be construed to enlarge the jurisdiction of the municipal court so as to authorize any judgment by such court in excess of one thousand dollars exclusive of interest and costs" is omitted.

Section 16–1903 of D.C. Code, 1961 ed., also contained the following provisions: "and the plaintiff shall not thereafter be allowed to dismiss his suit without the consent of the defendant, but the defendant shall be entitled to a trial of and judgment upon his claim, but the same shall be open to the same defenses to which it would be open in an action brought by him thereon; and on the trial of an issue on said plea of set-off judgment shall be rendered for the balance found due, whether to the plaintiff or to the defendant, with costs". These provisions are omitted as superseded by the Federal Rules of Civil Procedure, and the Rules of the Court of General Sessions. See, particularly, rules 7(a), 12(b), 13, 41(a)(2)(c), 42(b), and 54(b) of the former, and the identically numbered rules in Section I of the latter.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Damages from wrongful injunction 2
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Generally 1
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Jurisdiction 6
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1. Generally

Where defendant has sought affirmative relief by set-off or counterclaim, plaintiff may not discontinue action without defendant's consent, and, even though plaintiff fails to prosecute his claim, defendant is entitled to trial of and judgment upon his claim. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 33 A. 2d 626).

2. Damages from wrongful injunction

Where District Court dismissed wife's suit for divorce and taxed husband with her counsel fees, if court should find that wife's attorney knowingly participated in wrongful suing out of injunction by wife to tie up husband's funds, husband would be allowed to set off his damage from the injunction against the claim for counsel fees. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

Where judgment dismissing wife's suit for divorce and taxing husband with wife's counsel fees determined neither the facts nor the law with regard to husband's right to set off, against claim for counsel fees, damages sustained by wife's suing out of an injunction tying up husband's funds, husband would be allowed to set off such damage against the claimed fees if wife's attorney knowingly participated in wrongful issuance of injunction, notwithstanding allowance of fees had become final. *Id.*

3. Decisions under prior law

Durant v. *Murdock* (3 App. D.C. 114) (plea of set-off barred on its face by statute of limitations cannot be pleaded to prevent a summary judgment under 73d rule); *United States* v. *West* (8 App. D.C. 59) (when a plea of set-off only is filed, it is equivalent to a plea of confession and avoidance and transfers burden of proof to defendants); *Samaha* v. *Samaha* (18 App. D.C. 76) (right of plaintiff to dismiss action after plea filed).

Even if defendant had entered a plea of recoupment coupled with non assumpsit, it would not amount to an admission of the existence of a cause of action, for the plea of non assumpsit is a denial of liability. *Hornblower* v. *George Washington University* (31 App. D.C. 64, 14 Ann. Cas. 696).

4. Distinguished from common law

Set-off did not exist at common law and is entirely founded upon statutory regulation and it is carefully to be distinguished from recoupment, which is a right existing at common law, and which arises when there are counterclaims accruing upon the same general contract. *Durant* v. *Murdock* (3 App. D.C. 114).

5. In equity

In equity suit against a contractor to enforce mechanics' lien for materials furnished, a recoupment or set-off will not be allowed against claim of complainant, of penalty by reason of failure to finish building on time, as complainant was not privy to the contract. *Carver* v. *Hall* (3 App. D.C. 170).

A creditor, having unliquidated demands against another not reduced to judgment, may set them off in equity against a judgment recovered against him by that other person, if there has been no opportunity to set them off in the suit which led to the judgment, and if the person who holds the judgment is insolvent. *Fedarwisch* v. *Alsop* (18 App. D.C. 318).

Cross-demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced by way of set-off whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice. *Fitzgerald* v. *Wiley* (22 App. D.C. 329).

Damages, to be recouped in equity proceeding, by a cross-bill, as to foreclose of mortgage on patents to be granted against person interested in mortagage debt, as result of negilgence on the part of such person, a patent attorney, in not notifying mortgagor whereby patent lapsed and sale was prevented, must be limited to interest person has in original bill. *Id.*

6. Jurisdiction

In landlord's proceeding in municipal court for possession and rent, where tenant elected to plead its claim against landlord for $2,859.05 for negligent injury allegedly caused by leakage of rain to chattels in leased premises, the issue was within the jurisdiction of the municipal court. *Geracy, Inc.* v. *Hoover* (1943, 133 F. 2d 25, 77 U.S. App. D.C. 55, 147 A.L.R. 185).

7. Pleading

Where plaintiff filed in municipal court of District of Columbia particulars of demand in which she set up cause of action for $109.80, to which defendants responded with affidavit of defense and counterclaim accompanied by bill of particulars admitting they owed $100, and claiming $420 in counterclaim and demanding judgment for $320 plaintiff was not required to file an affidavit of defense in response to affidavit of merit which accompanied counterclaim, since rule 16 of such court must be

so interpreted as to produce a result consistent with clearly expressed purpose of rule 2, providing that no formal pleadings shall be required, even for initiation of Class B cases. *Shields* v. *Hawkins* (1942 125 F. 2d 204, 75 U.S. App. D.C. 172).

Plea of set-off "must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were the plaintiff in the prosecution of a suit therefor. And while the technical formality and accuracy of a declaration may not be required, the plea must, nevertheless, inform the plaintiff, with reasonable certainty, of the particulars of the demand which he is called upon to defend." *McGuire* v. *Gerstley* (26 App. D.C. 193, affirmed 27 S. Ct. 332, 204 U.S. 489, 51 L. Ed. 581).

Set-off must be specially pleaded. *Simmons* v. *Jaselli* (38 App. D.C. 242). See, also, *Knight* v. *W. T. Walker Brick Co.* (23 App. D.C. 519).

8. Replevin

In replevin action, after default on conditional sales contract, the right of defaulting buyer for breach of contract may be set off. *Marks* v. *Frigidaire Sales Corp.* (1932, 54 F. 2d 974, 60 App. D.C. 359, certiorari denied 52 S. Ct. 394, 285 U.S. 544, 76 L. Ed. 936).

9. Tenants' defenses

When tenant is sued for possession of realty for nonpayment of rent, he may defend by an equitable defense sufficient to defeat, in whole or in part, landlord's claim for rent or assert, by way of set-off, total or partial failure of consideration. *Seidenberg* v. *Burka* (D.C. Mun. App. 1954, 106 A. 2d 499).

10. Res judicata

Where tenant claimed $2,859.05 from landlord for negligent injury to chattels in leased premises, if tenant chose to reduce its claim to the dimensions of municipal court jurisdiction and submit to the adjudication of municipal court, in which the landlord had instituted proceeding for restitution of premises, the tenant was privileged to do so, but, if it did so, it forfeited the privilege of having the same issue adjudicated in the district court. *Geracy, Inc.* v. *Hoover* (1943, 133 F. 2d 25, 77 U.S. App. D.C. 55, 147, A.L.R. 185).

Where tenant pleaded its claim for $2,859.05 against landlord for negligent injury to chattels in leased premises as a defense to landlord's action in municipal court for possession of premises and for rent, the determination of the issue adversely to the tenant became "res judicata" thereof, and precluded tenant from recovering on such claim in action instituted in district court. *Id.*

Voluntary nonsuit taken by plaintiff without objection by defendant or expression of any desire to proceed with hearing on defendant's cross-claim was not "res judicata" of plaintiff's right to maintain a subsequent action against defendant on same cause of action. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 33 A. 2d 626).

§ 13–502. Effect of assignment.

When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of a nonnegotiable debt the defendant may set off by counterclaim any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1904 (Mar. 3, 1901, ch. 854, § 1566, 31 Stat. 1423).

In one place words "by counterclaim" are inserted after "set-off", in conformity with the Federal Rules of Civil Procedure and the Rules of the Court of General Sessions. See, for example, rule 13 of the former and the identically numbered rule in Section I of the latter.

For inapplicability of this section to negotiable instruments, see *Lincoln* v. *Grant* (47 App. D.C. 475).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. No application to negotiable instruments

"Taking this section as a whole, it is resolved into the statement that in an action by the assignee of any nonnegotiable debt, the defendant may set off any indebtedness to him of the assignor. The terms used are wholly inapplicable to negotiable instruments. According to accurate legal terminology, the person who transfers a promissory note is not called an assignor, but an indorser; the person to whom it is transferred is not designated the assignee, but the indorsee; and the use of the words 'nonnegotiable debt,' as meaning a negotiable promissory note would be a startling neologism." *Lincoln* v. *Grant* (47 App. D.C. 475).

§ 13–503. Action against principal and sureties.

In an action against principal and sureties, an indebtedness of the plaintiff to the principal may be set off by counterclaim as if he were the sole defendant. When the indebtedness so set off exceeds the plaintiff's demand, the judgment for the excess shall be in favor of the defendant who is sued as principal. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1906 (Mar. 3, 1901, ch. 854, § 1568, 31 Stat. 1423).

Words "by counterclaim" are inserted after the first "set-off", in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions.

The provisions of sections 16–1906 to 16–1908 of D.C. Code, 1961 ed., are carried into and preserved in this section and sections 13–504 and 13–505 herein because, while rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions provide for counterclaims between opposing parties in civil actions, they do not define "opposing party", as used therein. With respect to the types of parties referred to in these three sections, the sections may be considered as supplemental to those rules.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Sufficiency of facts

Plea that plaintiffs attempted to destroy defendants' business by persuading one partner to dissolve the partnership held not to set up facts sufficient to constitute a valid set-off, recoupment, or cause of action. *McGuire* v. *Gerstley* (26 App. D.C. 193, affirmed 27 S. Ct. 332, 204 U.S. 489, 51 L. Ed. 581).

§ 13–504. Action by trustee.

When the plaintiff in a civil action is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff may not be pleaded by way of counterclaim, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1907 (Mar. 3, 1901, ch. 854, § 1569, 31 Stat. 1423).

"Counterclaim" is substituted for "set-off", in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rules in Section I of the Rules of the Court of General Sessions.

The reason for preserving the provisions carried into this section is given in revision note under section 13–503 herein.

Changes are made in phraseology.

§ 13–505. Action by or against executor or administrator.

In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of counterclaim, a demand belonging to the decedent where he would have been entitled to rely upon the demand in an action against him; and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of counterclaim, as if the action had been brought by the decedent in his lifetime. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1908 (Mar. 3, 1901, ch. 854, § 1570, 31 Stat. 1423).

"Counterclaim" is substituted for "set-off" in two places, in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions.

The reason for preserving the provisions carried into this section is given in revision note under section 13–503 herein.

A minor change is made in phraseology.

Chapter 7.—TRIAL

Sec.
13–701. Special juries in District Court.
13–702. Jury trials in civil cases in Court of General Sessions.

§ 13–701. Special juries in District Court.

(a) In a case, civil or criminal, called for trial in the United States District Court for the District of Columbia, in which either party desires a special or struck jury, the clerk shall prepare a list of twenty jurors from the jurors in attendance and furnish the list to each of the parties. Each party or his counsel may strike off the names of four persons from the list, and the persons whose names remain on the list shall thereupon be impaneled and sworn as the petit jury in the case. If either party or his counsel neglects or refuses to strike from the list the number of names authorized by this subsection, the clerk may strike off the names, and the twelve persons whose names remain on the list shall be impaneled as the petit jury in the case.

(b) If the proceeding authorized by subsection (a) of this section is not insisted upon by either party, either party may furnish to the clerk a list of the jurors, not exceeding four in number, whom he wishes to be omitted from the panel sworn in the case, and the clerk, in making up the panel, shall omit the jurors to whom objection was so made.

(c) This section does not deprive a person of the right to challenge the array or polls of a panel returned, or to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in a particular case. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–319 (Mar. 3, 1901, ch. 854, § 72, 31 Stat. 1201; June 30, 1902, ch. 1329, 32 Stat. 523).

Words "civil or criminal" are inserted to make it clear that this section applies to both types of cases.

Changes are made in phraseology.

CROSS REFERENCE

Additional peremptory challenges, see U.S. Code, Title 28, § 1870.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Examination of jurors

Where, on voir dire examination, questions concerning claims for personal injuries previously suffered by jurors were propounded to panel and in response two jurors remained silent, there was no sufficient inquiry by counsel, on voir dire, to support a motion for new trial, or contention on appeal based on ground that some jurors gave false answers or concealed information by silence, and a denial of new trial was not an abuse of discretion. *Orenberg* v. *Thecker* (1944, 143 F. 2d 375, 79 U.S. App. D.C. 149).

§ 13–702. Jury trials in civil cases in Court of General Sessions.

When the amount in controversy in a civil action pending in the District of Columbia Court of General Sessions exceeds $20, and in all actions for the recovery of possession of real property, either party shall be entitled to a trial by jury, if he demands it in the manner provided by rules of the court. In such a case tried by jury, the trial judge shall conduct the jury trial and according to the practice and procedure in the United States District Court for the District of Columbia, and has the same power to instruct juries, set aside verdicts, arrest judgments, and grant new trials as judges of that court. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715, 11–751a, 11–755 (Mar. 3, 1921, ch. 125, § 3, 41 Stat. 1310; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section 11–715 of D.C. Code, 1961 ed., related to the Municipal Court prior to its merger, in 1942, with the Police Court, to form the second Municipal Court. Prior to its amendment by the act of Oct. 23, 1862, subsec. (a) of section 11–755 of the Code provided that the court thus established and the judges thereof should have the same jurisdiction and powers theretofore vested in the two former courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the Court of General Sessions and the judges thereof should have the same jurisdiction and powers theretofore vested in the Municipal Court for the District of Columbia (the second Municipal Court) and the judges thereof. Section 11–751a of D.C. Code, 1961 ed., enacted by the 1962 act, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

In the first sentence of this section, the phrase (with respect to demand for jury trial) "in the manner provided by rules of the court", is inserted for the purpose of completeness. See the following rules of the Rules of the Court: Civil Rules, rule 38; Landlord and Tenant Rules, rule 7; Small Claims Rules, rule 17.

Changes are made in phraseology.

The provisions of sections 11–818 and 11–915 and 11–936 (first clause) of D.C. Code, 1961 ed., relating to jury trials in the Small Claims and Conciliation Branch of the court (11–818) and the Juvenile Court (11–915 and 11–936) are carried into those chapters herein dealing with procedure in that branch and that court.

The provisions of 11–715a and 11–716a (first clause) of D.C. Code, 1961 ed., relating to jury trials in criminal cases in the court are carried into chapter 7 of Title 16 herein relating to criminal procedure in the court.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Construction

Landlord suing tenants for alleged breach of rental agreement should not have been denied jury trial unless he would retain an attorney to represent him. *J. F. Paton* v. *J. C. Rose and A. L. Rose* (D.C. App. 1963, 191 A. 2d 455).

One who wishes to act as his own lawyer in a civil or criminal case in which he is a party has a right freely and voluntarily to do so but he can expect no concessions and must conform to rules of court procedure. *Id.*

This section providing that, in all actions for recovery of possession of real property, either party may demand a trial by jury, is permissive rather than mandatory and gives right to jury trial but does not require such trial. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

2. Demand for jury trial

When the value in controversy exceeds $20, either party to an action in the municipal court may demand a trial by jury. *Kennedy* v. *David* (1940, 109 F. 2d 676, 71 App. D.C. 340).

Where court rule required demand for jury trial to be filed not later than appearance day, and two days before appearance day defendants filed motion to dismiss and before it was decided, but after appearance day, defendants filed demand for jury trial, demand was timely. *Daly* v. *Scala* (D.C. Mun. App. 1944, 39 A. 2d 478).

Where defendants in a class B suit against them on note, filed their jury demand before the return day, but did not accompany it by an answer as required by court rule, striking out defendants' jury demand was not error. *Alvarado* v. *Rosenberg* (D.C. Mun. App. 1947, 50 A. 2d 269).

3. Discretion of court

Where defendant did not file demand for jury trial within time prescribed by court rule nor request extension of time for demand, denial of motion for jury trial filed four days later was not an abuse of discretion, where trial court found that defenses involving questions of fact were insubstantial, that jury trial was being sought primarily for purposes of delay, and that no circumstances indicating the advisability of such trial in the interest of justice existed. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

4. Evidence

Where landlord sued for possession, the situation disclosed a genuine issue as to whether landlord sought the premises in good faith for immediate personal use. Since this was a material factual issue, the court must disregard the tenants' affidavits which were based on information and belief and did not conform to the rules. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

5. Factual issues

If conflict appears as to a material fact, the summary judgment procedure does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true; and to support summary judgment, the situation must justify a directed verdict insofar as the facts are concerned. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

In making determination of factual issues, doubts are to be resolved against the granting of a summary judgment. *Id.*

Factual issues are not to be tried or resolved by summary judgment procedure; only the existence of a genuine and material factual issue is to be determined. *Id.*

6. Good faith

In a suit for possession, the presence of the question of good faith as a crucial one should cause the court to hesitate more than ordinarily before concluding that it is in a position to deny a trial. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

7. Interrogatories

Where there is a seeming inconsistency in answers of jury to interrogatories or some question as to what constituted true verdict of jury, matter is to be decided by trial judge in the proper exercise of his discretion. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

Where jury found in answer to three interrogatories that there had been a subletting, that landlord was not precluded from charging it as a basis of suit for possession, and that landlord was entitled to possession for tenant's violation of convenant against subletting, a comprehensive disposition of entire case was made, and it was unnecessary for jury to consider remaining interrogatories as to whether there had been a transfer of possession to alleged subtenant and jury's answer to remaining interrogatories was voluntary and mer surplusage. *Id.*

8. Questions for jury

Under the evidence, whether tenant violated covenant in lease against subletting so as to authorize landlord to repossess premises was for jury. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

In landlord's action for possession of leased premises, tenant could not complain that fact issue of landlord's oral agreement that tenant might remain in possession was left to jury. *J. & J. Slater, Inc.* v. *Brainerd* (D.C. Mun. App. 1945, 43 A. 2d 714).

Where in a suit for possession for immediate and personal use, the crucial issue is whether landlord seeks possession in good faith, it is an extraordinary issue of fact since it involves the state of mind or motives rather than the ascertainment of a fact in the ordinary sense. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

9. Rules of court

Parties may not be deprived of right to jury trial by a rigid construction of a procedural court rule. *Daly* v. *Scala* (D.C. Mun. App. 1944, 39 A. 2d 478).

Rules of the Municipal Court that demand for jury trial shall be filed not later than time for appearance of defendant stated in notice, or such extended time as judge may fix by special order, is reasonable. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

"Excusable neglect" is not a factor in fixing the applicability of a rule of court which makes no reference to such neglect. *Id.*

10. Special verdict

In landlord's action to recover possession of leased premises, conflicting evidence authorized submission for special verdict of issue whether landlord orally agreed that tenant could remain in possession so long as it paid any rental asked by landlord, and municipal court properly assumed responsibility of deciding remainder of case and questions of law. *J. & J. Slater, Inc.* v. *Brainerd* (D.C. Mun. App. 1945, 43 A. 2d 714).

11. Waiver of right to jury trial

Where no demand for jury trial was made within five days after case was at issue, the right to jury trial was waived, though the case was consolidated for trial with another case in which jury trial had been demanded. *Grant* v. *Williams* (D.C. Mun. App. 1953, 94 A. 2d 475).

Where trial of consolidated cases started before jury but judge later announced that one of the cases would not be submitted to the jury because there had been no jury demand in that case, and no objection was raised to such action, such ruling was not subject to review on appeal. *Id.*

TITLE 14.—PROOF

DISTRIBUTION TABLE

For disposition of former sections of this title, see table preceding Title 11.

Chap.		Sec.
1.	Evidence Generally—Depositions	14–101
3.	Competency of Witnesses	14–301
5.	Documentary Evidence	14–501
7.	Absence for Seven Years	14–701

Chapter 1.—EVIDENCE GENERALLY—DEPOSITIONS

Sec.
14–101. Evidence under oath—Affirmation in lieu of oath—Perjury.
14–102. Impeachment of own witness—Surprise.
14–103. Depositions for use in State and Territorial Courts.
14–104. Testimony of nonresident witnesses for use in Court of General Sessions.

§ 14–101. Evidence under oath—Affirmation in lieu of oath—Perjury.

(a) All evidence shall be given under oath according to the forms of the common law.

(b) A witness who has conscientious scruples against taking an oath, may, in lieu thereof, solemnly, sincerely, and truly declare and affirm. Where an application, statement, or declaration is required to be supported or verified by an oath, the affirmation is the equivalent of an oath.

(c) Whoever swears, affirms, declares, or gives testimony in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury in a case where he would be guilty of that crime if sworn according to the forms of the common law. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 14–101, 14–102 (Mar. 3, 1901, ch. 854, §§ 1056, 1057, 31 Stat. 1354).

Section consolidates sections 14–101 and 14–102 of the D.C. Code, 1961 ed.

Manner of taking testimony, see Rule 43(a) of the Federal Rules of Civil Procedure and Rule 26 of the Federal Rules of Criminal Procedure.

Provisions similar to subsec. (b) of this section relating to affirmations are found in Rule 43(d) of the Federal Rules of Civil Procedure and Rule 43(c) of the Court of General Sessions Civil Rules. Oath as including affirmation, see section 49–206 of the D.C. Code, 1961 ed., and 1 U.S.C. § 1.

Changes are made in phraseology.

Cross Reference

Immunity of witnesses testifying in prostitution cases, see § 22–271.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissibility 1
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1. Admissibility

As a general rule any evidence which is logically probative of some fact in issue is relevant and prima facie admissible unless it conflicts with the same settled exclusionary rule. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

2. Bill of particulars

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness testified falsely when he testified that he did not at request of Administrative Assistant to the President of the United States take care of correspondence of Administrative Assistant while he was away was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government relied in proving that witness perjured himself in testifying that he had not taken care of Administrative Assistant's mail while he was away. *United States* v. *Lattimore* (1953, 112 F. Sup. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment that witness testified falsely when he stated that prior to certain date he did not know that certain person was a Communist was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government relied to show that witness had been told that such person was a Communist, and defining the word "Communist", and informing witness as to identity of persons who told witness that such person was a Communist, and time, place, and circumstances under which witness was told this. *Id.*

3. Custom and usage

A custom to be binding must be shown to be the general usage of the trade and must be definite, uniform, well-known and established by clear and satisfactory evidence. *Goldberg* v. *Stouck* (D.C. Mun. App. 1950, 76 A. 2d 785). See, also, *Lucas* v. *Auto City Parking* (D.C. Mun. App. 1949, 62 A. 2d 557).

4. Examination of witness

It was not prejudicial error for a police officer, in testifying, to state "It looks like he had been caught again," on the ground that this testimony referred to his prior record, since it did not refer to a prior conviction. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 67 A. 2d 522, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

5. Expert testimony

Rarely is expert testimony as to value binding on the trier of the facts and it is never binding when inconsistent with other evidence. *Urciolo* v. *Sachs* (D.C. Mun. App. 1948, 62 A. 2d 308).

It was error to exclude testimony of police officers who observed defendant that, in their opinion, defendant was under influence of intoxicating liquor, on ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions for even though one is not an expert, he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 640).

6. Hearsay

Statements made by the operator of house of ill fame in appellant's presence while they were both under arrest to the effect that appellant was visiting her and that she was operating a house of ill fame, were heresay; but since such statements were received without objection, the

trial judge had a right to consider them along with defendant's silence. *Wilson* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 214).

7. Hypothetical questions

Permitting witness to answer hypothetical question which had no basis in the evidence which preceded it was improper. *Henkel* v. *Varner* (1944, 138 F. 2d 934, 78 U.S. App. D.C. 197).

Practice of eliciting expert testimony by having experts listen to other witnesses and give an opinion based upon such evidence is not generally approved though it is harmless when basic testimony is not voluminous nor complicated; and hypothetical questions containing salient points of previous witnesses' testimony are generally preferred to avoid confusion. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

8. Indictment

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because in violation of the Sixth Amendment to the federal Constitution protecting accused in right to be informed of nature and cause of such accusation against him. *United States* v. *Lattimore* (1953, 112 F. Supp. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count charging that witness perjured himself when he said that he did not know that certain person was a Communist, was invalid because violative of First Amendment to the federal Constitution providing that Congress shall make no law abridging freedom of speech or of the press and the Sixth Amendment protecting an accused in the right to be informed of the nature and cause of the accusation against him. *Id.*

9. Instructions

It was error for trial court in its charge to the jury to state "that the jury had a duty to probe the minds of the parties as to the meaning of a supplemental written contract" where the court made no amplification or explanation of this instruction. *Syndicated Constr. Corporation* v. *Ross* (D.C. Mun. App. 1948, 62 A. 2d 368, appeal dismissed 73 A. 2d 899).

10. Irrelevancy

Inclusion of an "incidental book" maintained at police precinct to prove District had notice of a depression in District road was harmless error where there was considerable other evidence covering the same subject and report would have no relevancy without testimony connecting the depression with the accident. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

11. Market value

In an action for breach of contract to convey real property, evidence of market value is what a willing buyer would pay in cash to a willing seller and speculative value is not market value. *Urciolo* v. *Sachs* (D.C. Mun. App. 1948, 62 A. 2d 308).

In an action for breach of contract to convey real property, trial court is not compelled to accept speculative transactions as evidencing true market value. *Id.*

12. Materiality

In a perjury case arising out of a congressional investigation, which concededly may be broad in its scope as far as determining necessity for corrective legislation is concerned, element of materiality must be present or charges fall. *United States* v. *Lattimore* (1953, 112 F. Supp. 507).

13. Oaths

Where witness testified that "he did not believe in the God or the Bible, nor in rewards or punishments after death, but that he did recognize a right and duty of society to force member to speak the truth," his evidence was not inadmissible where he was permitted to testify on affirmation. *Gillars* v. *U.S.* (1950, 182 F. 2d 962, 87 U.S. App. D.C. 16).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

14. Parol evidence

Where an owner signed a listing agreement with broker authorizing sale on specified terms, if and when a purchaser was found, it was not error for trial court to permit the owner to testify that she had signed on the assurance that time would be extended if she had no place to go and such testimony does not vary a written contract by parol testimony and was not offered to contradict any written instrument, but only to show misrepresentation. *Ellis* v. *Morgan* (D.C. Mun. App. 1949, 65 A. 2d 797).

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may properly be inferred that the party did not intend the writing to be a complete and final statement of the whole transaction. *Jay's Restaurant* v. *Jack Stone Co.* (D.C. Mun. App. 1949, 62 A. 2d 799).

15. Recordation of evidence

Defendant who contended that his former attorney had failed to comply with his request that testimony in prosecution be recorded was not prejudiced in any way where case was brought to Court of Appeals on an approved statement of evidence which recited testimony of each witness in great detail and there was nothing to indicate that such statement was incomplete or defective, or failed to give an accurate narration of what happened at trial. *W. Delaney* v. *United States* (D.C. App. 1963, 190 A. 2d 100).

In an action for breach of contract, it was error for trial court to permit appellee to testify that he signed a supplemental contract with the understanding that it related only to house and lot and did not include the wall or fence, where there was no explanation as to how this "understanding" was arrived at and it represented merely the mental process of the witness. *Syndicated Const. Corporation* v. *Ross* (D.C. Mun. App. 1948, 62 A. 2d 368, appeal dismissed 73 A. 2d 899).

16. Res gestae

Declaration made anywhere from a few moments to five or ten minutes after an accident neither met test of spontaneity nor closeness of time so as to be considered part of the res gestae. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

17. Reversible error, exclusion

No error was committed by excluding a letter which contained no recitals of fact but merely claimed that defendant had sold the shop without his knowledge and demanded his half of the proceeds. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

Exclusion of testimony of a witness who did not hear the entire conversation was reversible error where it appeared that the testimony, according to the proffer of proof, went to the heart of the controversy; hence, the witness should have been permitted to testify as to how much of the conversation he heard when subjected to cross-examination. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

18. Shop book rule

It was reversible error to exclude entries made in the accounts receivable ledger regarding credit transactions of a client to prove that such client was operating as a partnership as such ledger sheet was admissible under the Federal Shop Book Rule as a record made in the regular course of business. *Orndorff* v. *Cohen* (D.C. Mun. App. 1949, 62 A. 2d 794).

19. Weight of evidence

The weight of evidence is a question for the trier of the facts and a finding of fact supported by substantial evidence cannot be set aside on appeal and the weight of such evidence is not necessarily determined by the number of witnesses. *Cohen* v. *United States* (D.C. Mun. App. 1949, 63 A. 2d 354).

To be entitled to recover commission, broker must have produced a purchaser who was ready, able and willing to buy on the terms authorized by the principal and

purchaser's signature on contract is some evidence of willingness to proceed but not that he was financially able or ready to do so. *Long* v. *Murchison* (D.C. Mun. App. 1948, 62 A. 2d 370).

§ 14–102. Impeachment of own witness—Surprise.

When the court is satisfied that the party producing a witness has been taken by surprise by the testimony of the witness, it may allow the party to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to the party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause. Before such proof is given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made the statements and if so allowed to explain them. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–104 (June 30, 1902, ch. 1329, § 1073a, 32 Stat. 540).

Rules 43 of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules, respectively, relate to the scope of examination and cross-examination of witnesses but do not cover the subject of impeachment by proof of contradictory statements.

This section is consistent with Rule 26 of the Federal Rules of Criminal Procedure because it merely codifies the established rule.

See *Wheeler* v. *U.S.* 1953, 93 U.S. App. D.C. 159, 211 F. 2d 19.

Changes are made in phraseology

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1. Conduct of prosecutor

In prosecution for murder, where prosecution did not abide by the court's ruling that it could not impeach its own witness and over repeated objections sought to convince jury that the witness had given a statement that was inconsistent with his sworn testimony at trial and made references to a prior statement of the witness not in evidence and improper conduct was renewed in summation to the jury, improper conduct of the prosecutor required reversal where conduct of the prosecutor might have affected the verdict on the issue of self-defense or the degree of homicide. *Belton* v. *United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

2. Cross-examination

Where trial judge had sustained the prosecutor's contention that witness was hostile, prosecutor's asking of a series of questions phrased "You don't remember [such-and-such]?" did not constitute attempt to cross-examine prosecution witness. *Doto* v. *United States* (1955, 223 F. 2d 309, 96 U.S. App. D.C. 17, certiorari denied 76 S. Ct. 59, 350 U.S. 847, 100 L. Ed. 754).

3. Discretion of court

In prosecution for carnally knowing and abusing a ten year old girl, trial court did not abuse its discretion in permitting the prosecution, when it impeached the girl, who was the prosecution's witness, because the prosecution was surprised by testimony of girl contrary to statement made by girl to the police and to the grand jury, to use the entire statement of the girl to the police. *Wheeler* v. *United States* (1954, 211 F. 2d 19, 93 U.S. App. D.C. 159, certiorari denied 74 S. Ct. 876 347 U.S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

Granting Government permission to cross-examine witnesses as hostile was not an abuse of discretion, where witness was at time of transactions giving rise to prosecution a business associate of defendant. *Fields* v. *U.S.* (App. D.C. 1947, 164 F. 2d 97, certiorari denied 68 S. Ct. 355, 332 U.S. 851, 92 L. Ed. 421, rehearing denied 68 S. Ct. 607, 333 U.S. 893, 92 L. Ed. 1123).

4. Foundation for impeachment

The refusal to admit transcript of testimony of witness at first trial was not error where no foundation was laid to permit introduction of transcript for purpose of affecting credibility of witness. *Glover* v. *District of Columbia* (D.C. Mun. App. 1951, 77 A. 2d 788).

5. Government witness

Witness having been assured by court that he could not incriminate himself by testifying to purchase of narcotics made at instance of Government, United States Attorney had right to believe that witness would testify in accordance with receipt by which he acknowledged receiving money from officer for purchase of heroin, and had right, for impeachment purposes, to announce "surprise" when witness refused to do so. *Carrado* v. *United States* (1954, 210 F. 2d 712, 93 U.S. App. D.C. 183, certiorari denied 74 S. Ct. 874, 347 U.S. 1018, 98 L. Ed. 1140).

6. Harmless or prejudicial error

In prosecution for conducting rooming house without a license where prosecution expected witness to testify that he paid rent and was surprised by witness' testimony that he paid no rent, but there was no other testimony by anyone that such witness paid rent, permitting proof of prior inconsistent statement of witness was prejudicial error. *Byrd* v. *District of Columbia* (D.C. Mun. App. 1945, 43 A. 2d 46).

7. Impeachment of Government witness

Government may impeach accomplice of accused, upon surprise, by questioning him concerning a statement made and now repudiated. *Smith* v. *United States* (1927, 17 F. 2d 223, 57 App. D.C. 71). See, also *Johnson* v. *Newton* (1928, 25 F. 2d 542, 58 App. D.C. 118).

Impeaching Government's own witness by prior written statements, within discretion of court. *Bedell* v. *United States* (1934, 68 F. 2d 776, 63 App. D.C. 31).

8. Instructions

Prior inconsistent statements of witness admitted for impeachment purposes are not received as affirmative proof of fact for any other purpose, and in jury cases the jury should be so instructed. *Byrd* v. *District of Columbia* (D.C. Mun. App. 1945, 43 A. 2d 46).

9. Prejudice as necessary

Prior inconsistent statements by witness are received only for impeachment purposes and are allowed for the purpose of counteracting actual hostile testimony with which the party has been surprised, and may not be received when the witness' testimony is not prejudicial to the party's case. *Byrd* v. *District of Columbia* (D.C. Mun. App. 1945, 43 A. 2d 46).

To justify impeachment by proof of prior inconsistent statements, it must appear that the witness testified to facts which tended to destroy or injure the party's case or contradicted evidence which he was reasonably relied on to corroborate. *Id.*

10. Review

Trial court's ruling on "surprise," for impeachment purposes, may not be disturbed unless it plainly appears that ruling is without any rational basis. *Carrado* v. *United States* (1954, 210 F. 2d 712, 93 U.S. App. D.C. 183, certiorari denied 74 S. Ct. 874, 347 U.S. 1018, 98 L. Ed. 1140).

11. Surprise

Permitting prosecution to claim surprise during examination of government witness, who first testified that he could not tell whether person who emerged from alley in which victim had been shot was male or female, and to allow prosecution to exhibit to witness his prior written statement, whereupon witness testified that he had seen tall colored man emerge from alley, was not reversible error. *F. Robinson* v. *United States* (1962, 308 F. 2d 327, 113 U.S. App. D.C. 372).

Statute permitting surprise party to introduce prior inconsistent statement of witness only for purpose of affecting credibility of witness differentiates between objective of affecting credibility of witness and objective of proving statement's contents as a fact. *L. Bartley* v. *United States* (1963, 319 F. 2d 717, 115 U.S. App. D.C. 316).

Admission of prior inconsistent statement of witness for prosecution, which claimed surprise, without admonition that statement was to be considered only as bearing on credibility of witnesses was plain error affecting substantial rights of defendant and was, under circumstances, reversible error even though there was no objection made to statement's admission or request for instruction. *Id.*

Permitting prosecution to claim surprise during examination of government witness who first testified that he could not tell whether person who emerged from alley in which victim had been shot was male or female, and to allow prosecution to exhibit to witness his prior written statement, whereupon witness testified that he had seen tall colored man emerge from alley, was not reversible error. *F. Robinson* v. *United States* (1962, 308 F. 2d 327, 113 U.S. App. D.C. 372).

Though this section allows an exception to the general rule that one cannot impeach his own witness by use of previously made contradictory statements, to come within the exception, actual surprise must be found. *Belton* v. *United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

A finding of surprise is, by this section in the District of Columbia, a prerequisite to the impeachment by a party of his own witness by former testimony, but even when a prior statement is used to impeach, it is admissible solely to affect credibility and is not to be considered as support for the truth of its contents. *Young* v. *United States* (1954, 214 F. 2d 232, 94 U.S. App. D.C. 62).

This section providing that, whenever court shall be satisfied that party producing witness has been taken by "surprise" by testimony of witness, such party may, in discretion of court, be allowed to prove, for purpose only of affecting credibility of witness, that witness has made to such party or his attorney statements substantially variant from his sworn testimony about material facts in the cause, allows ample latitude for application of a broad concept of "surprise" by requiring only that court shall be satisfied that "surprise" exists. *Wheeler* v. *United States* (1954, 211 F. 2d 19, 93 U.S. App. D.C. 159, certiorari denied 74 S. Ct. 876, 347 U.S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

12. Transcript of previous testimony

Transcript of testimony in earlier trial is not automatically admissible in a later trial but may be admissible for the purpose of affecting the credibility of a witness. *Glover* v. *District of Columbia* (D.C. Mun App. 1951, 77 A. 2d 788).

§ 14–103. Depositions for use in State and Territorial Courts.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a State, territory, commonwealth, possession, or place under the jurisdiction of the United States, the testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States district courts. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–204 (Mar. 3, 1901, ch. 854 § 1062, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 139, 63 Stat. 109).

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico.

Depositions for use in foreign countries are covered by 28 U.S.C. § 1782. Depositions generally are covered by Rules 26 et seq. and 45 of the Federal Rules of Civil Procedure and Rule 26 et seq. of the Civil Rules of the Court of General Sessions, which superseded sections 14–103 and 14–201 to 14–203 of D.C. Code, 1961 ed.

Minor changes are made in phraseology.

Cross References

Depositions—
Criminal cases, see §§ 23–111, 23–112.
Probate court, see § 16–3111.

NOTES TO DECISIONS UNDER PRIOR LAW

Depositions 2
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1. In general

The code provisions relative to depositions, etc., supersede all former legislation on the subject. *Hutchins* v. *Hutchins* (41 App. D.C. 367).

2. Depositions

Deposition may be offered in evidence by adverse party. *New Arcade Co.* v. *Owens* (1919, 258 F. 965, 49 App. D.C. 65).

Counsel had the right to read as a part of his own case so much of the deposition as he desired, which was not clearly fragmentary and misleading. *Bernhardt* v. *City & S. R. Co.* (1920, 263 F. 1009, 49 App. D.C. 265).

Deposition taken in New York City, pursuant to notice, wherein, witness testified that he lived in that city, is admissible without proof that witness was unavailable at time of trial. "In such a case the law presumes that the witnesses continued to live in that city and were there at the time of the trial." *Campbell* v. *Willis* (1923, 290 F. 271, 53 App. D.C. 296).

3. Foreign countries

Testimony of witness in foreign country must be taken on interrogatories and cross-interrogatories, under letters rogatory. *Hutchins* v. *Hutchins* (41 App. D.C. 367).

4. General Interrogatories

General interrogatories which do not inform the opposing party of the answer that might be expected are improper, and "should be called attention to by motion to exclude or suppress the answer, in advance of the trial." *Walker* v. *Warner* (31 App. D.C. 76). See, also, *Anacostia & P. R.R. Co.* v. *Klein* (8 App. D.C. 75); *Massachusetts Mut. Acc. Assn.* v. *Dudley* (15 App. D.C. 472).

5. Objection

Objections to questions and answers must be noted at the time of taking of deposition or within 10 days after the return thereof, and an objection first made when the deposition is read to the jury comes too late. *MacAfee* v. *Higgins* (31 App. D.C. 355). See, also, *Welch* v. *Lynch* (30 App. D.C. 122).

6. Review

Reviewing a decision of the Board of Tax Appeals, whose rules of practice and procedure are in accordance with the rules of evidence applicable in courts of equity of the District of Columbia, court applied Supreme Court Equity Rule 46. *Garden City Feeder Co.* v. *Com. Int. Rev.* (C.C.A. 8, 1935, 75 F. 2d 804).

7. Witnesses

Word "witnesses" is used in its ordinary sense, and includes all persons whose declarations under oath are received for any legal purpose, and embraces deponents in affidavits and the recorder is a representative of the Civil Service Commission, duly authorized by it to administer oaths of witnesses, and is therefore a person authorized by the laws of the United States to administer oaths. *United States* v. *Crandol* (D.C.-Va. 1916, 233 F. 331).

§ 14–104. Testimony of nonresident witnesses for use in Court of General Sessions.

If the testimony of nonresident witnesses is required by either party to a civil action or proceeding in the District of Columbia Court of General Sessions the Court, upon motion designating the names of the witnesses, may appoint an examiner

to take their testimony, to whom it shall issue a commission. The testimony shall be taken on written interrogatories and cross-interrogatories. The written interrogatories must be filed at least three days before the issuance of the commission. The commission shall not issue unless the party or his agent or attorney applying therefor file his affidavit, setting forth that he believes that the testimony of the witnesses is material to the issue in the action or proceeding and that the motion is not made for the purpose of delay. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–741, 11–751a, 11–755 (Mar. 3, 1901, ch. 854, § 26, 31 Stat. 1194; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 67 Stat. 103; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–741 of D.C. Code, 1961 ed. (from which the text of this section is derived), which related to the first Municipal Court, with that part of section 11–755(a) thereof, which, in connection with the merger, in 1942, of the first Municipal Court and the former Police Court, to form the second Municipal Court, provided, prior to its amendment by the act of Oct. 23, 1962, that the second Municipal Court and the judges thereof should have and exercise the same powers and jurisdiction theretofore had or exercised by the two former courts. After the 1962 amendment, subsec. (a) of section 11–755 vested in the Court of General Sessions and the judges thereof the same powers and jurisdiction theretofore vested in the second Municipal Court and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

For additional provisions relating to depositions to be used in the Court of General Sessions, see Rule 26 et seq. (particularly Rule 28) of the civil rules of that court. See, also, section 13–101(a) of this revised part, which requires that the procedural rules prescribed by the Court of General Sessions for its Civil Division "shall conform as nearly as may be practicable to the forms, practice, and procedure prescribed by the Federal Rules of Civil Procedure". That provision is derived from section 11–756(b) of D.C. Code, 1961 ed.

Changes are made in phraseology.

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Depositions 2
Foreign countries 6

2. Depositions

Tax Court did not have authority to require taking of deposition of director of corporate taxpayer to perpetuate testimony, where taxpayer had not filed a petition for redetermination with Tax Court. *Louisville Builders Supply Co.* v. *Commissioner of Internal Revenue* (1961 294 F. 2d 333, U.S. App. 6th Cir.).

6. Foreign countries

Order requiring husband in his divorce suit to pay transportation expenses and costs incurred by counsel for wife in traveling to Iran to take her deposition, based on finding that her financial statement was incomplete and that she was unable to travel to United States because of illness, would be reversed where it appeared that prior refusal of American consul to provide notarial service for wife in connection with deposition was error which could have been corrected through diplomatic channels, and case would be remanded with instructions to determine proper notarial powers of American consul in Iran so that further evidence could be taken by written interrogatories and cross-interrogatories under letters rogatory. *M. R. Moezie* v. *G. J. Mozie* (D.C. App. 1963, 192 A. 2d 808).

The proper method of obtaining further evidence in action against Iranian resident who claimed inability to travel to United States was by written interrogatories and cross-interrogatories under letters rogatory. *Id.*

Chapter 3.—COMPETENCY OF WITNESSES

Sec.
14–301. Parties and other interested persons generally.
14–302. Testimony against deceased or incapable person.
14–303. Testimony of deceased or incapable person.
14–304. Death or incapacity of partner or other interested persons.
14–305. Conviction of crime.
14–306. Husband and wife.
14–307. Physicians.
14–308. Assessment officials as expert witnesses in condemnation proceedings.
14–309. Clergy.

§ 14–301. Parties and other interested persons generally.

Except as otherwise provided by law, a person is not incompetent to testify in a civil action or proceeding by reason of his being a party thereto or interested in the result thereof. If otherwise competent to testify, he is competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to the action or proceeding. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–301 (Mar. 3, 1901, ch. 854, § 1063, 31 Stat. 1357).

The provisions of this chapter on competency of witnesses are still effective under Rule 43(a) of the Federal Rules of Civil Procedure, which provides, in part: "All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner." For the meaning of "state" and "statute of the United States" as applied to the District of Columbia, see Rule 81(e).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Children, competency of 2
Confidential communications of third persons 3
Expert testimony 4
In general 1

1. In general

Acts of Congress relating to the admission of parties to testify in the courts of the United States apply to the courts of the District of Columbia. *Page* v. *Burnstine* (1880, 102 U.S. 664, 12 Otto 664, 26 L. Ed. 268).

2. Children, competency of

The competency of a child as a witness depends upon capacity and intelligence of the child, his appreciation of difference between truth and falsehood, as well as of his duty to tell the truth. *Posey* v. *U.S.* (D.C. Mun. App. 1945, 41 A. 2d 300).

In order to be competent as a witness, a child should have a just appreciation of difference between right and wrong. *Id.*

The testimony of an infant may be excluded in toto on grounds of incompetency, but once the child is allowed to testify, the uncertainty of his evidence goes only to its weight and does not disqualify it. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

3. Confidential communications of third persons

Where widow was neither a party nor interested in the suit, she was incompetent to testify to private conversations between her and her husband in his lifetime. *Hopkins* v. *Grimshaw* (1897, 17 S. Ct. 401, 165 U.S. 342, 41 L. Ed. 739).

In suit for custody of child, letters of the child's father's second wife, written to him before marriage, were material, relevant, and competent, and the father was a competent witness to testify concerning them. *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

Whether streetcar motorman's report of accident was a privileged communication which streetcar company could not be compelled to produce in passenger's action against it for injuries could not be determined by court without knowledge of circumstances under which report was made, reason and purpose for which it was made, and to whom it was made. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

That motorman's report to streetcar company of accident was in possession of streetcar company's counsel did not automatically make report a "privileged communication" which company could not be required to produce in passenger's action against it for injuries. *Id.*

4. Expert testimony

Owner of household goods who had previously operated rooming house and obviously was an experienced housewife was competent without qualifying as an expert to testify as to value of such items, and weight of testimoney was for trial court. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

§ 14–302. Testimony against deceased or incapable person.

(a) In a civil action against:

(1) a person who, from any cause, is legally incapable of testifying, or

(2) the committee, trustee, executor, administrator, heir, legatee, devisee, assignee, or other representative of a deceased person or of a person so incapable of testifying,

a judgment or decree may not be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff or of the agent, servant, or employee of the plaintiff as to any transaction with, or action, declaration or admission of, the deceased or incapable person.

(b) In an action specified by subsection (a) of this section, if the plaintiff or his agent, servant, or employee, testifies as to any transaction with, or action, declaration, or admission of, the deceased or incapable person, an entry, memorandum, or declaration, oral or written, by the deceased or incapable person, made while he was capable and upon his personal knowledge, may not be excluded as hearsay. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–302 (Mar. 3, 1901, ch. 854, § 1064, 31 Stat. 1357; Apr. 19, 1920, ch. 153, 41 Stat. 567; June 24, 1948, ch. 609, 62 Stat. 579).

Changes are made in arrangement and phraseology.

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1. In general

"We think the statute should not be extended to prevent the living party from testifying to the truth or falsity of mere extraneous facts, which have been testified to by other witnesses, not involving declarations or admissions by the deceased party." *Lockwood* v. *Rucker* (34 App. D.C. 376). See, also, *Cafritz* v. *Corporation Audit Co.* (1945, 60 F. Supp. 627).

In action by administrator against decedent's debtor, debtor having been called as a witness by administrator may testify as to transaction, for herself, or as to declarations by the intestate. *Lemon* v. *Martin* (1925, 3 F. 2d 710, 55 App. D.C. 186).

This section seeks to protect only persons legally representing deceased against claims which may be fraudulent and does not seek to prevent anyone from showing who does or does not legally represent deceased. *Duckett* v. *Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303),

2. Admissions of decedents

Plaintiff can not testify as to statements made by defendant's testator to a third person, in the presence of the witness for the statute "clearly forbids the surviving party to testify to any admission of the deceased made with respect to a transaction had with him." *McCurley* v. *National Sav. & Trust Co.* (1919, 258 F. 154, 49 App. D.C. 10). See, also, *Dawson* v. *Waggaman* (23 App. D.C. 428); *Patten* v. *Glover* (1 App. D.C. 466, affirmed 17 S. Ct. 165 U.S. 394, 41 L. Ed. 760); *Manogue* v. *Herrell* (13 App. D.C. 411, 455); *Parish* v. *McGowan* (39 App. D.C. 184, reversed on other grounds 35 S. Ct. 543, 237 U.S. 285, 59 L. Ed. 955).

3. Compensation for services

Defendant's testimony, in support of his counterclaim for legal services, that decedent who died in 1954 leaving estate of $40,000, had in 1948 claimed to be unable to pay for services rendered to him at such time, did not compel finding, as matter of law, that decedent had fraudulently concealed cause of action against himself for services and had thus extended time for commencement of action. *Da Costa, Administratrix* v. *Hardy* (D.C. Mun. App. 1956, 118 A. 2d 805).

4. Corporate officers and stockholders

A stockholder, officer and director of a corporation is not a "party" with reference to a contract between the corporation and decedent, and his testimony is not excluded. *Cush* v. *Allen* (1926, 13 F. 2d 299, 56 App. D.C. 327, 54 A.L.R. 261).

In suit against corporation, seeking to show liability of corporation on contract of sale negotiated by deceased promoter, "Section 1064 (this section) affords no proper basis for exclusion of the evidence." *Lucas* v. *Hamilton Realty Corp.* (1939, 105 F. 2d 800, 70 App. D.C. 277).

5. —— Transactions

Evidence by automobile buyer regarding cash payment made to deceased taxpayer was admissible in action respecting redetermination of income tax liability of deceased. *Logan Square Auto Mart. Inc., et al.* v. *Commissioner of Internal Revenue* (1961, 291 F. 2d 136, U.S. App. 7th Ct.).

The surviving witness rule under this section does not apply where transactions are between an individual and a corporation. *Corporation Audit Co.* v. *Cafritz* (1946, 156 F. 2d 839, 81 U.S. App. D.C. 196).

Where plaintiff, preparing for an extended vacation, signed and left with general manager of an audit company checks payable to plaintiff's corporations, in action against audit company and estate of general manager for proceeds of checks, this section did not exclude plaintiff's testimony against audit company on account of general manager's death, but it did not permit plaintiff's testimony against manager's estate by reason of survivorship of corporation. *Id.*

6. Corporation controlled by deceased

Testimony allegedly violating "surviving party" rule was not subject to objection by corporations controlled by

deceased participant. *Cafritz* v. *Corporation Audit Co.* (1945, 60 F. Supp. 627).

7. Corroborations

Evidence, adduced by former employee of decedent, suing administratrix for back salary due, including canceled checks, payroll records, and tax returns, sufficiently corroborated plaintiff's testimony to avoid prohibition of statute precluding judgment against decedent's representative on uncorroborated testimony of adversary. *A. P. Pekofsky, Admt'x etc.* v. *O. Blalock* (D.C. Mun. App. 1961, 175 A. 2d 604).

Under statute prohibiting judgment against representative of decedent on unsupported testimony of adversary, each case depends upon its own facts, but test is whether evidence, taken as whole, tends to make story substantially more credible. *Id.*

This section now enables the surviving party to testify but limits the effect of his testimony; and upon the evidence presented, appellee's testimony was sufficiently corroborated. *Rosinski* v. *Whiteford* (1950, 184 F. 2d 700, 87 U.S. App. D.C. 313, 21 A.L.R. 2d 1009).

In action for accounting by testatrix, brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, to permit judgment to be based on plaintiff's testimony that he had met third brother in 1946 and had asked that certain stock be sent to him and that third brother had agreed to do so, credible evidence corroborating such testimony was necessary *Bevard* v. *Bevard* (1952, 103 F. Supp. 533).

In action for accounting by testatrix' brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, instrument signed by third brother and dated 1930 certifying that as of that date third brother held in his own name certain corporate stock for plaintiff did not corroborate alleged admission by third brother that in 1946, he still held such stock for plaintiff, particularly in view of fact that third brother with plaintiff's acquiescence, exercised his own judgment freely in reinvesting plaintiff's share of the estate. *Id.*

Where, in proceeding on claim against a decedent's estate, no evidence other than plaintiff's own testimony was presented by plaintiff in support of the claim which was based on an alleged agreement by decedent to pay plaintiff $100 per month for his services in setting up a bookkeeping system for her, such testimony alone was insufficient to prove the claim. *Hohensee* v. *Vanech Administrator etc.* (D.C. Mun. App. 1960, 161 A. 2d 703).

A judgment against an estate on a claim by a survivor can be based substantially on the survivor's testimony if there is other evidence from which reasonable men might conclude that his testimony is probably true. *Id.*

Under statutory provision that in any civil action against executor of deceased person, no judgment or decree shall be rendered in favor of plaintiff founded on uncorroborated testimony of plaintiff as to any transaction with or action, declaration, or admission of deceased, corroborative evidence need not be sufficient of itself to support judgment, but judgment could be based essentially on survivor's testimony if there was other evidence from which reasonable men might conclude that survivor's testimony was probably true. *Davis* v. *Carmody* (D.C. Mun. App. 1959, 154 A. 2d 132).

In action by nurse against executor to recover for alleged overtime services to decedent on theory that decedent has promised to reimburse nurse therefor, testimony of two witnesses called in attempt to corroborate nurse's testimony was not sufficient, and nurse therefore could not recover. *Id.*

8. Cross-examination

Testimony brought out on cross-examination after calling of witness by adversary is competent. *Payne* v. *Payne* (1926, 11 F. 2d 464, 56 App. D.C. 167).

9. Evidence

In action by husband's executors against widow to impress constructive trust on proceeds of bank account, for which printed bank cards which recited a right of survivorship had been signed by both husband and widow, and from which widow, after husband's death, withdrew all the funds for deposit elsewhere in her own name, evidence failed to rebut presumption, based on fact that funds for such account had been provided only by husband, that widow did not have a survivorship interest. *Imirie* v. *Imirie and Bogley, etc.* (1957, 246 F. 2d 652, 100 U.S. App. D.C. 371).

Judgment rendered for plaintiff in action to set aside a deed to realty executed by plaintiff's deceased father in favor of plaintiff's defendant sister, was not rendered invalid by this section prohibiting rendition of judgment in civil action against representative of a deceased on uncorroborated testimony of plaintiff or of agent or employee of plaintiff as to transaction with or action, declaration, or admisison of deceased, on the ground that evidence was admitted in violation of this section, where judgment was supported by other evidence. *Santucci* v. *Pignatello* (1951, 188 F. 2d 463, 88 U.S. App. D.C. 190).

In action for accounting by testatrix' brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, in absence of corroborating evidence plaintiff's testimony that at a meeting with third brother in 1946, such brother had promised to send certain corporate stocks to plaintiff would be excluded. *Bevard* v. *Bevard* (1952, 103 F. Supp. 533).

Where, in action arising from a collision between a truck of the plaintiff and defendant's taxicab, testimony of the appellant that relationship between the defendant and the driver of her taxicab was one of bailment and not one of master and servant should have been admitted because the issue was fundamental to the case and this section, which seeks to protect only persons who legally represent the deceased against claims which may be fraudulent under which the evidence was excluded is clearly inapplicable here since it is clear that defendant was not such a person. *Nash* v. *Holzbeierlein* (D.C. Mun. App. 1949, 68 A. 2d 403).

10. Insurance

This section providing that, if one of original parties to transaction or contract has died, the other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased, did not require exclusion of beneficiary's account of her husband's conversation with finance office clerk, to show intent to change beneficiary of National Service Life policy, particularly because change of beneficiary was not a "transaction" between insured and beneficiary but between him and his insurer. *Rosenschein* v. *Citron* (1948, 169 F. 2d 885, 83 U.S. App. D.C. 346).

11. Joint maker of note

Quaere: Whether a joint maker of a note can testify as a witness for plaintiff as to an agreement with the deceased comaker, stopping the statute of limitations, where the suit was originally brought against the witness and the representatives of the decedent, and prosecuted only against decedent. *White* v. *Connecticut General Life Ins. Co.* (34 App. D.C. 460).

12. Objection not raised at trial

Although the testimony was not objected to, Court of Appeals did not consider objection waived and disregarded testimony on appeal; dissenting opinion states this rule to be different from that in all other jurisdictions. *Faunce* v. *Woods* (1925, 5 F. 2d 753, 55 App. D.C. 330, 40 A.L.R. 208).

13. Offer of proof

In action for rent, refusal to permit tennant's wife to testify as to an agreement with landlord's agent respecting acceptance of repairs in lieu of rent, on ground that agent was deceased, did not reveal error where tennant made no offer of proof as to conversation with agent, and was permitted to show all repairs that had been made and landlord's acquiescence in payment of repairs by agent. *Shlopak* v. *Davison* (D.C. Mun. App. 1943, 34 A. 2d 126).

14. Protection against fraudulent claims

This section providing that, if one of original parties to transaction or contract has died, other party thereto shall not be allowed to testify to any declaration of deceased in

suit against personal representative of deceased, seeks to protect only persons legally representing deceased against claims which may be fraudulent. *Rosenschein* v. *Citron* (1948, 169 F. 2d 885, 83 U.S. App. D.C. 346).

15. Suits by fiduciary

This section prohibiting judgment on uncorroborated testimony in actions against administrators has no applications to suits commenced by an administrator. *Pryor* v. *Bond* (D.C. Munn. App. 1954, 110 A. 2d 539).

16. Surviving party

Neither a corporation nor its agent can be a surviving "party" to a transaction within meaning of this section. *Corporation Audit Co.* v. *Cafritz* (1946, 156 F. 2d 839, 81 U.S. App. D.C. 196).

17. Widows

Testimony of widow as to work done in connection with business owned jointly with her husband is not testimony "to a transaction or contract" with the deceased. *Ellis* v. *Ellis* (1922, 280 F. 457, 51 App. D.C. 383). See, also, *Tuohy* v. *Trail* (19 App. D.C. 79).

18. Wills

The persons named as executors and legatees in an alleged will cannot, in order to probate the will, be permitted to utilize this section. *Duckett* v. *Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

Where probate of will naming testatrix' sister sole beneficiary was opposed on ground of undue influence and want of testamentary capacity, this section did not require exclusion of testimony of testatrix' brother that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her. *Id.*

19. Witness called by court

It is not the duty of the court to call a party to testify whenever the party requests that it be done, but it should be done only when there is something extreme or special. *Ockstadt* v. *Bowles* (34 App. D.C. 58). See, also, *Janes* v. *Janes* (1922, 278 F. 576, 51 App. D.C. 267).

When appellant's deposition was regularly taken and he was fully and carefully cross-examined by counsel for appellees, the result was exactly the same as though he had been called to testify by the court. *Conkling* v. *New York Life Ins. & Trust Co.* (1920, 262 F. 620, 49 App. D.C. 166).

§ 14–303. Testimony of deceased or incapable person.

When a party, after having testified at a time while he was competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such a case the opposite party may testify in opposition thereto. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–303 (Mar. 3, 1901, ch. 854, § 1065, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540).

Words "insane or otherwise" preceding "incapable" are omitted as covered by "incapable".

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Coroner's inquest

A coroner's inquest is not an action or judicial proceeding between the same parties or their legal representatives within the meaning of this section. *Capital Trac. Co.* v. *King* (44 App. D.C. 315).

§ 14–304. Death or incapacity of partner or other interested person.

Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly entitled or liable, and some of them have died or become incapable of testifying, any others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, are not, nor is the adverse party, incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or become incapable of testifying. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–304 (Mar. 3, 1901, ch. 854, § 1066, 31 Stat. 1357).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Corporations controlled by deceased 1
Surviving party 2

1. Corporations controlled by deceased

Testimony allegedly violating "surviving party" rule was not subject to objection by corporations controlled by deceased participant. *Cafritz* v. *Corporation Audit Co.* (1945, 60 F. Supp. 627).

In action for accounting against corporations and administratrix of individual who controlled them, testimony concerning transaction between plaintiff and individual was admissible under this section applicable where original parties to transaction are jointly liable and some of them have died, especially where such testimony related to extraneous facts not involving declarations or admissions, and evidence established that individual actively participated in corporation's wrong. *Id.*

2. Surviving party

Neither a corporation nor its agent can be a surviving "party" to a transaction within meaning of this section. *Corporation Audit Co.* v. *Cafritz* (1946, 156 F. 2d 839, 81 U.S. App. D.C. 196).

§ 14–305. Conviction of crime.

A person is not incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime. The fact of conviction may be given in evidence to affect his credibility as a witness, either upon the cross-examination of the witness or by evidence aliunde; and the party cross-examining him is not bound by his answers as to such matters. To prove the conviction of crime the certificate, under seal, of the clerk of the court wherein proceedings containing the conviction were had, stating the fact of the conviction and for what cause, is sufficient. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–305 (Mar. 3, 1901, ch. 854, § 1067, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeal of conviction 1
Business of repairing firearms 2
Conviction 3
Crimes, felonies, and misdemeanors 4
Cross-examination 5
Denial by witness 6
Examination of witness 7
Exclusiveness of remedy 8
Impeachment 9
Scope of inquiry 10
Tax court proceedings 11

1. Appeal of conviction

In prosecution for possession of government check stolen from mails, for forged endorsement, and for uttering of check so forged, defendant's prior conviction for same offenses was not admissible where defendant's appeal was pending and consequences of error in admitting such evidence for purpose of showing a pattern of conduct or scheme on part of defendant were sufficiently

grave, under the circumstances, to warrant new trial. *Fenwick* v. *United States* (1958, 252 F. 2d 124, 102 U.S. App. D.C. 212).

It is wholly illogical and unfair to permit a defendant to be interrogated upon a previous conviction from which an appeal is pending as the pendency of an appeal prevents the prosecution from proving a previous conviction for impeachment purposes, but though error was committed, it was not so prejudicial as to require reversal. *Campbell* v. *United States* (1949, 176 F. 2d 45, 85 U.S. App. D.C. 133).

2. Business of repairing firearms

Defendant charged with carrying pistol for which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. *Cormier* v. *United States* (D.C. Mun. App. 1957, 137 A. 2d 212).

3. Conviction

Evidence that attorney was brother of accused and had been convicted and disbarred for crime although he had been pardoned and reinstated, was admissible to disprove alleged good faith reliance on legal advice, introduced to negate specific intent of accused to violate statute, where pardon was of kind commonly given to first offenders who have given promise of reform. *A. J. Wacksman* v. *United States* (D.C. Mun. App. 1961, 175 A. 2d 789).

It was improper, in impeaching witness, to admit indictment as to two counts resulting in conviction and to put before the jury the other counts of which witness was acquitted; however, reversal was not required where inadmissible material could have had no substantial effect on jury, in view of the other evidence available. *Id.*

Basis of this section providing that conviction of a witness may be given in evidence to affect his credibility is an assumption that testimony of a person who has demonstrated his dishonesty in the past is unworthy of trust, and basis for such rule does not exist when crime for which witness has been convicted is not of such a dishonesty-evincing nature. *Colter* v. *Einbinder, Deputy Commissioner, etc.* (1960, 184 F. Supp. 523).

The remoteness of the conviction does not affect its admissibility. *Murray* v. *United States* (1923, 288 F. 1008, 53 App. D.C. 119, certiorari denied 43 S. Ct. 703, 262 U.S. 757, 67 L. Ed. 1218).

To constitute "conviction" under this section there must be plea or verdict of guilty, as well as judgment and sentence. *Crawford* v. *United States* (1930, 41 F. 2d 979, 59 App. D.C. 356). See, also, *Thomas* v. *U.S.* (1941, 121 F. 2d 905, 74 App. D.C. 167).

Instructions with reference to the effect of evidence of prior convictions on credibility. *Mostyn* v. *United States* (1933, 64 F. 2d 145, 62 App. D.C. 22).

Charge that government asked defendant concerning his conviction of attempted murder without disclosing that he had been "pardoned" revealed no impropriety on part of prosecutor, in absence of showing that prosecution was aware of the "pardon" or indication of its existence until after sentence, particularly where paper produced was not a pardon but a document purporting to remove political disabilities arising out of the conviction. *Slaughter* v. *U.S.* (D.C. Mun. App. 1948, 60 A. 2d 700).

4. Crimes, felonies, and misdemeanors

The word "crime" includes both felonies and misdemeanors. *Murray* v. *United States* (1923, 288 F. 1008, 53 App. D.C. 119, certiorari denied 43 S. Ct. 703, 262 U.S. 757, 67 L. Ed. 1218).

The word "crime," as used in statute, includes both felonies and misdemeanors, this case involving a simple assault. *Bostic* v. *United States* (1938, 94 F. 2d 636, 68 App. D.C. 167, certiorari denied 58 S. Ct. 523, 303 U.S. 635, 82 L. Ed. 1095).

This section permitting an attack on credibility of one "convicted of a crime" does not include violations of municipal ordinances or misdemeanors involving no element of inherent wickedness. *Frost* v. *Hays* (D.C. Mun. App. 1958, 146 A. 2d 907).

5. Cross-examination

Accused may be cross-examined respecting previous arrest and peace bond to refresh his memory concerning threats to deceased. *Hawkins* v. *United States* (1930, 39 F. 2d 294, 59 App. D.C. 249).

In prosecution for purchase of morphine sulphate not in nor from original stamped packages, permitting district attorney to draw from accused on cross-examination admissions of his prior convictions on two occasions of grand larceny was not error. *Goode* v. *U.S.* (1945, 149 F. 2d 377, 80, U.S. App. D.C. 67).

6. Denial by witness

Since defendant denied that he had been formerly convicted and counsel abandoned the matter, defendant was not prejudiced. *Clifton* v. *United States* (1924, 295 F. 925, 54 App. D.C. 104).

If denial of witness was false, counsel for prosecution could have pursued the matter and established the conviction by evidence aliunde, or by production of a certificate by the clerk of the court wherein the conviction was had. *Id.*

According to this section, "the certificate is necessary only in order to prove previous convictions where the defendant being examined denies the convictions." *Gordon* v. *United States* (1923, 289 F. 552, 53 App. D.C. 154).

7. Examination of witness

It was no error to ask defendant, a witness for himself, if he had not been convicted of five misdemeanors. *Scaffidi* v. *United States* (C.C.A. 1, 1930, 37 2d 203).

8. Exclusiveness of remedy

This section providing method for proof of prior convictions for purpose of affecting credibility prescribes the exclusive method, and proof by any other means is not admissible. *Cormier* v. *United States* (D.C. Mun. App. 1957, 137 F. 2d 212).

In prosecution of defendant for carrying unlicensed pistol, use of F.B.I. records of various arrests and convictions of defendant as rebuttal to his testimony on cross-examination respecting prior convictions, was erroneous. *Id.*

9. Impeachment

Fact that defendant charged with grand larceny had received a pardon for prior conviction based upon unauthorized use of a motor vehicle, which pardon was received pursuant to Presidential proclamation promulgating a general amnesty for persons convicted of violations of federal statutes who had served honorably in World War II for not less than a year, did not preclude prosecutor from cross-examining defendant concerning prior conviction in effort to impeach defendant's credibility. *Richards* v. *United States* (1952, 192 F. 2d 602, 89 U.S. App. D.C. 354, 300 L.R. 2d 880, certiorari denied 72 S. Ct. 564, 342 U.S. 946, 96 L. Ed. 703, rehearing denied 72 S. Ct. 676, 343 U.S. 921, 96 L. Ed. 1334).

Impeachment in civil assault case by showing indictment for forgery is prejudicial. *Chebithes* v. *Price* (1930, 37 F. 2d 1008, 59 App. D.C. 212).

Violation of ordinance against the sale of half of round trip railroad ticket not crime, to impeach credibility. *Clawans* v. *District of Columbia* (1933, 62 F. 2d 383, 61 App. D.C. 298).

It is improper for impeachment purposes, to show accusation, arrest or indictment. *Sanford* v. *United States* (1938, 98 F. 2d 325, 69 App. D.C. 44).

When an accused offers himself as a witness, his credibility may be impeached as in the case of any other witness, and previous convictions may be shown to that end. *Goode* v. *U.S.* (1945, 149 F. 2d 377, 80 U.S. App. D.C. 67).

It is improper for impeachment purposes to show accusation, arrest or indictment for a crime, in any case, civil or criminal. *Wanamaker* v. *Lewis, Jr. WWDC Inc., etc., et ano.* (1959, 173 F. Supp. 126).

It is improper to question a witness as to when she was first arrested for the purpose of impeaching the witness' credibility which can be impeached only by evidence of conviction of crime. *United States* v. *Offutt* (1956, 145 F. Supp. 111, modified on other grounds 247 F. 2d 88, certiorari denied 78 S. Ct. 85, 355 U.S. 856, 2 L. Ed. 2d 64).

Where party claiming right to possession of rings deposited with police department was at time of trial in prison, and his case was presented by interrogatories and

cross-interrogatories, admission in evidence of claimant's criminal record as affecting his credibility as witness was not error despite fact that he had not been questioned concerning his record on cross-interrogatories, in view of fact that claimant had disclosed earlier in proceedings that he was in prison and could consequently anticipate that criminal record would be used against him. *Kronick* v. *Sullivan* (D.C. Mun. App. 1951, 83 A. 2d 518).

Defendant's admission of three prior convictions was admissible for purpose of affecting his credibility as a witness. *Slaughter* v. *U.S.* (D.C. Mun. App. 1948, 60 A. 2d 700).

10. Scope of inquiry

Whether the witness is or is not a defendant, if the opposing party introduces his previous conviction the witness should be allowed either to extenuate his guilt or to assert his innocence of the previous charges. *U.S.* v. *Boyer* (1945, 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

In prosecution for obtaining money by false pretenses, where government brought out on cross-examination that defendant had been previously convicted of bad check charges and of embezzlement, and defendant was permitted to explain all bad check convictions, refusal to permit defendant to explain the conviction of embezzlement, although technically wrong, did not justify a reversal. *Id.*

Where evidence of previous conviction of a defendant or other witness is offered for impeachment, inquiry into the previous crime should stop with any reasonably brief protestations on behalf of a defendant or witness which he may wish to make, and how far the inquiry should go is a matter in which the trial judge should be given a wide discretion. *Id.*

It is improper for impeachment purposes to ask a witness if he has been convicted of a felony when he has not been so convicted. *Wanamaker* v. *Lewis, Jr., WWDC, Inc., et ano.* (1959, 173 F. Supp. 126).

Evidence of prior convictions must be restricted to question of defendant's credibility and may not be considered for purpose of determining his guilt or innocence of the offense charged. *Peyton* v. *D.C.* (D.C. Mun. App. 1953, 100 A. 2d 36).

11. Tax court proceedings

In proceedings before the Tax Court, convictions for income tax evasion of taxpayers could be put into evidence as affecting their credibility, though based on pleas of nolo contendere. *Masters and Williams* v. *Commissioner of Internal Revenue* (1957, 243 F. 2d 335).

Where one of the taxpayers did not personally take the stand in proceedings before Tax Court, but his sworn income tax returns were in evidence as were his other records, his conviction for income tax evasion was properly admitted in evidence as affecting his credibility. *Id.*

In proceedings on petitions for assessment of income tax deficiences, Tax Court properly admitted, for impeachment purposes, testimony and judgments, entered upon pleas of nolo contendere in prior proceeding convicting taxpayer and partner for income tax evasion during certain years, and properly permitted Government's cross-examination with respect to convictions, in view of 26 U.S.C. (I.R.C. L939) § 1111 providing that Tax Court is bound by rules of evidence applicable in District Courts and District Code provision authorizing admission of evidence of prior conviction testimony entered upon pleas of nolo contendere. *Kilpatrick* v. *Commissioner of Internal Revenue* (1956, 227 F. 2d 240).

§ 14–306. Husband and wife.

(a) In civil and criminal proceedings, a husband or his wife is competent but not compellable to testify for or against the other.

(b) In civil and criminal proceedings, a husband or his wife is not competent to testify as to any confidential communications made by one to the other during the marriage. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 14–306, 14–307 (Mar. 3, 1901, ch. 854, §§ 1068, 1069, 31 Stat. 1358).

Section consolidates sections 14–306 and 14–307 of the D.C. Code, 1951 ed.

Changes are made in phraseology.

CROSS REFERENCE

Confidential communications between husband and wife in criminal prosecutions for non-support, see § 22–904.

NOTES TO DECISIONS UNDER PRIOR LAW

Action for injuries to wife 2
Divorce 3
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Waiver of privilege 16
Widow 17

1. In general

This section must be taken "as qualified by § 964 of the 1901 Code (§ 16–420), which provides a special rule of evidence for divorce cases." *Lenior* v. *Lenior* (24 App. D.C. 160). See, also, *Hopkins* v. *Grumshaw* (1897, 17 S. Ct. 401, 165 U.S. 342, 41 L. Ed. 739); *Chase* v. *United States* (7 App. D.C. 149); *McCartney* v. *Fletcher* (10 App. D.C. 572); *Capital Trac. Co.* v. *Lusby* (12 App. D.C. 295); *Bergheimer* v. *Bergheimer* (17 App. D.C. 381); *Mallery* v. *Frye* (21 App. D.C. 105).

"The Code specifically provides that 'husband and wife shall be competent * * * to testify for or against each other.' Section 964 of the 1901 Code (§ 16–420) * * * has no relation to the competency of the witnesses * * *. The section (§ 16–420) deals only with the weight of the evidence." *Early* v. *Early* (1920, 261 F. 1003, 49 App. D.C. 123).

"The purpose of section 1068 (this section) * * * was to remove grounds of incompetency and not increase them * * *. Therefore a husband or wife, under this statute, can claim no greater privilege than existed at common law." *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

The provisions of this section apply to all proceedings wherein it is sought to compel the testimony of the husband or wife for or against one another, including bills of discovery, interrogatories in garnishment, and like proceedings. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

2. Action for injuries to wife

In action by husband and wife for injuries to the wife, the wife is a competent witness. *Capital Trac. Co.* v. *Lusby* (12 App. D.C. 295).

3. Divorce

No decree for divorce or the annulment of a marriage can be given upon the mere unsupported petition of either husband or wife, even though the petition should be sworn to; and it is not apparent that the conditions are altered by the substitution of a deposition for the petition as plain purpose of this is to prohibit divorce or annulment of marriage upon statement of one without corroborative evidence. *Lenoir* v. *Lenoir* (24 App. D.C. 160).

Where defendant's witness testified that he was present and saw transaction regarding which defendant had testified but on cross-examination prosecution established that witness could not possibly have witnessed the transaction, the jury might properly have disregarded the whole of defendant's testimony as unworthy of belief. *Arbuckle* v. *U.S.* (1945, 146 F. 2d 657, 79 U.S. App. D.C. 282).

The parties to a divorce suit are competent witnesses. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

4. Circumstances of conversation

In plaintiff's action against his sister-in-law based on a debt for money loaned, it was error not to allow sister-in-law, when her husband was on the witness stand, to show on preliminary examination facts and circumstances surrounding an alleged conversation between sister-in-law and her husband in an attempt to bring out its confidential nature, since if confidential the communication was inadmissible. *Sacks* v. *Sacks* (1942, 124 F. 2d 527, 75 U.S. App. D.C. 165).

5. Communications prior to marriage

Communications prior to marriage are not confidential. *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

6. Confidential nature

Communication of husband to wife must have been one of a confidential nature to come within this section. *Dobbins* v. *U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where some of testimony of defendant's former wife concerned defendant's financial affairs before they were married, and other portions of testimony related to transactions or prospective transactions which by their nature required communications to third persons, the testimony did not relate to confidential communications, and admission of testimony was not error. *Id.*

7. Criminal proceedings

Under statute it was not reversible error to permit wife to take stand as a government witness over husband's objection when wife, who did not actually testify against him, did not object to being called. *I. J. Postom* v. *United States* (1963, 322 F. 2d 432, 116 U.S. App. D.C. 219).

Under statute court should, outside presence of jury, tell one who is called to testify for or against his spouse that his testimony cannot be compelled but may be received if volunteered. *Id.*

8. Examination of witness

Cross-examination of witness regarding conviction of crime was proper. *Hall* v. *Gordon* (1942, 128 F. 2d 461, 76 U.S. App. D.C. 33).

9. Garnishment proceedings

Testimony of husband or wife for or against one another including interrogatories in garnishment can not be compelled. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

10. Historical

At common law "in collateral proceedings not immediately affecting their mutual interests, either husband or wife might be a witness, although the evidence of one tended to criminate the other, or to contradict the other, or to subject the other to a legal demand." *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

11. Husband's instructions to wife

Quaere, whether, in the prosecution of the husband for selling liquor on Sunday, the wife of the accused, who made the sale, will be permitted to testify as to instructions or prohibitions she had from her husband as to selling on Sunday. *Trometer* v. *District of Columbia* (24 App. D.C. 242).

12. Interrogatories

One spouse can not be compelled to answer interrogatories, for such disclosures would amount pro tanto to testimony of witness in the case. *McGrew* v. *McGrew* (1924, 298 F. 204, 54 App. D.C. 331).

Interrogatories in garnishment proceedings are within the provisions of this section. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

13. Legal representative

Decedent's niece who was named as beneficiary in a prior will and who joined in caveat filed by her mother was not a "legal representative" within this section. *In re Cottrill's Estate* (1941, 39 F. Supp. 689).

14. Marriage

Testimony of the husband as to the fact of marriage is admissible. *Chase* v. *United States* (7 App. D.C. 149).

15. Self-interest, testimony against

Wife being a competent witness may testify against her own interest, that she had nothing more than a naked legal title while the sole beneficial ownership was in the husband. *Mallery* v. *Frye* (21 App. D.C. 105).

16. Waiver of privilege

Until a legal representative of a deceased person has been appointed, no authority exists to waive a physician's privilege under this section. *In re Cottrill's Estate* (1941, 39 F. Supp. 689).

17. Widow

A wife shall not be compellable to disclose any communication made to her by her husband during the marriage and it applies as well after the death as during the lifetime of the husband, and it is immaterial whether the objection be taken by demurrer or answer. *McCartney* v. *Fletcher* (10 App. D.C. 572).

§ 14–307. Physicians.

(a) In the courts of the District of Columbia a physician or surgeon may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a patient in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the patient or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, and the disclosure is required in the interests of public justice; or

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–308 (Mar. 25, 1896, ch. 245, 29 Stat. 138; Mar. 3, 1901, ch. 854, §§ 1073, 1636, 31 Stat. 1358, 1434; Aug. 9, 1955, ch. 673, § 4, 69 Stat. 612).

The privilege granted by this section is subject to waiver in discovery proceedings for physical and mental examination of persons under Rule 35 of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules, respectively.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissibility in general 1
Annulment or divorce 2
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1. Admissibility in general

Physician who does not treat prisoner, but only examines him in order to testify about his condition, may

testify as to such fact. *Taylor* v. *United States of America* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

"It is for the court, and not the witness, to determine whether or not the facts upon which the conclusion or opinion is founded are within or without the limitations of the statute," and it is error to permit the "witness to discriminate as to matters of fact in his own mind, and merely state his conclusion to the jury." *Hutchins* v. *Hutchins* (48 App. D.C. 495).

Testimony of physician attending testatrix inadmissible; confidential relationship presumed; tender of proof out of presence of jury. *Stafford* v. *American Secur. & Trust Co.* (1932, 55 F. 2d 542, 60 App. D.C. 380).

Evidence that physicians had attended insured, to contradict application denying medical attendance, is admissible. *Kavakos* v. *Equitable Life Assur. Soc.* (1937, 88 F. 2d 762, 66 App. D.C. 380). See, also, *Eureka-Maryland Assur. Co.* v. *Gray* (1941, 121 F. 2d 104, 74 App. D.C. 191, certiorari denied 62 S. Ct. 114, 314 U.S. 613, 86 L. Ed. 494).

Where four physicians, two representing each side, examined defendant in connection with a probable prosecution, defendant took no ailment or complaint to them as his physicians, and defendant was told the circumstances of the mental examination and was warned against making statements that might be to his detriment, permitting the physicians who represented the government at the examination to testify in prosecution for murder and rape was not error. *Catoe* v. *U.S.* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

Under this section, the type of evidence that is not admissible is that which is given in confidence by a patient to a physician, and it protects the personal nature of an ordinary patient-physician relationship. *Id.*

2. Annulment or divorce

Where wife sought annulment of marriage, contracted in Virginia, on ground of husband's fraudulent concealment of fact that he was suffering with a venereal disease, and wife acted promptly, as soon as she ascertained truth, and refused thereafter to continue marital status, the wife who failed to produce Virginia examining physician, counsel having been appointed by court to represent husband, did not come under rule that a party who has it peculiarly within his power to produce a witness, by failing to do so, creates an inference that if the testimony were produced it would be unfavorable. *Stone* v. *Stone* (1943, 136 F. 2d 761, 78 U.S. App. D.C. 5).

3. Autopsy or post mortem reports

"It is well settled that physicians and surgeons may be compelled to testify to the facts disclosed by an autopsy, where the relation of physician and patient did not exist under the lifetime of the deceased." *Carmody* v. *Capital Trac. Co.* (43 App. D.C. 245, Ann. Cas. 1916D, 706). See, also, *Eureka-Maryland Assur. Co.* v. *Gray* (1941, 121 F. 2d 104, 74 App. D.C. 191, certiorari denied 62 S. Ct. 114, 314 U.S. 613, 86 L. Ed. 494).

Report of a post mortem examination is not privileged under this section making privileged communications to physician or information obtained by physician concerning patient, though examination is made in hospital where patient was treated, if examination does not relate to diagnosis or treatment of patient. *Ferguson* v. *Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, report of post mortem examination of insured and testimony of physician concerning objective laboratory findings derived from post mortem examination, were admissible over objection that they were privileged, though post mortem examination was made at hospital where insured was treated, in absence of showing that information obtained in course of treatment of insured was significant in guiding the post mortem examination. *Id.*

4. Construction

The full spirit of this section regarding admissibility of testimony of physician is to be made effectual. *Catoe* v. *U.S.* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

5. —— Rules of Civil Procedure

Fed. Rules Civ. Proc. rule 35(b) (1), (2) that party requesting and receiving copy of his adversary's physician's report of physical or mental examination of such party must furnish adversary, on request, like report of any previous or subsequent examination of same condition, is in derogation of statutory privilege and should be strictly construed. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

6. Cross-examination

Commitment of girl to psychiatric school on strength of alleged professional opinion of doctor, whom girl had no opportunity to cross-examine and whose professional status was not established in record, was error, especially in view of fact that mother's counsel was permitted to repeat what doctor had told him and urge acceptance of doctor's recommendation. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

7. Death certificate

Death certificate properly admitted in evidence. *Labofish* v. *Berman* (1932, 55 F. 2d 1022, 60 App. D.C. 397).

8. Executors

The term "legal representative" includes "executor." *Thompson* v. *Smith* (1939, 103 F. 2d 936, 70 App. D.C. 65, 123 A.L.R. 76).

Physician was not competent to testify when called by the caveatees, one of whom was the nominated executor, as the latter could not waive the privilege. *McCartney* v. *Holmquist* (1939, 106 F. 2d 855, 70 App. D.C. 334, 126 A.L.R. 375).

9. Extent of privilege

This section governing disclosure by physician or surgeon of confidential information which he may have acquired in attending a patient in professional capacity is very broad and forbids disclosure by physician or any information obtained by him in professional capacity. *Taylor* v. *United State of America* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

The privilege against physicians' disclosure of confidential information, acquired in attending patient, without patient's consent, extends not only to information orally given physician by patient, but also to any information obtained by physician in his professional capacity through his observation or examination and diagnosis and treatment of patient as well as all inferences and conclusions therefrom. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

10. Hospital record

A properly authenticated hospital record of patient's name, address, age, and the like, is admissible, provided there is no disclosure of diagnosis or treatment. *Kaplan* v. *Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, hospital records were properly admitted for limited purpose of establishing dates of insured's admissions into hospitals without violating this section making privileged communications to physician or information obtained by physician concerning patient. *Ferguson* v. *Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580.

This section respecting confidential communications to a physician encompasses information contained in hospital records concerning diagnosis or treatment. *Ferguson* v. *Quaker City Life Ins. Co.* (D.C. Mun. App. 1957, 129 A. 2d 189).

In action on an industrial life policy with defense of violation of provisions of the policy respecting hospital treatment, admitting hospital records concerning the insured to indicate the basis of treatment was improper as involving a privileged matter, since basis for hospitalization entailed a diagnosis within the privilege of this section. *Id.*

11. Legal representative

As used in this section disqualifying physician from giving testimony disclosing confidential information without consent of patient or his "legal representative", the quoted term refers to persons who are entitled to enforce the particular substantive right of the patient which is involved in a particular case. *Calhoun* v. *Jacobs* (1944, 141 F. 2d 729, 79 U.S. App. D.C. 29).

12. Mental condition

At trial in November, 1955, for robbery committed May 9, 1955, court properly applied amendment effective August 9, 1955, which removed prohibition of disclosure of confidential information by physicians in criminal trials when accused raises the defense of insanity. *Parker* v. *United States* (1956, 235 F. 2d 21, 98 U.S. App. D.C. 262).

Privilege created by this section as to information acquired by physician in attending patient affords protection to patients who have been committed to public mental hospitals. *Taylor* v. *United States of America* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

Even though testimony of physician as to information acquired by him in attending patient in professional capacity was inadmissible at that person's criminal trial, such testimony could be included for consideration by trial judge in deciding whether such person, who had previously been found incompetent to stand trial, was now competent. *Id.*

Admission of testimony of mental hospital physician and psychiatrist who had treated defendant in mental hospital to which defendant had been committed until he was mentally competent to stand trial was in violation of this section creating privilege as to facts learned by physician in treating patient, and was error requiring reversal of conviction. *Id.*

13. Persons waiving privilege

Under this section, in suit by grantor's heirs to set aside, on ground of grantor's mental incapacity, a conveyance of realty to a stranger, the heirs were entitled to exercise, as against the grantee, the patient-grantor's privilege of waiver so that medical testimony and hospital records that grantor was insane were properly admitted. *Calhoun* v. *Jacobs* (1944, 141 F. 2d 729, 79 U.S. App. D.C. 29).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, mother, as daughter's antagonist, would not waive daughter's right of privilege concerning prognosis and recommendations of her personal physician. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

14. Physicians' records

In action for personal injuries, District Court did not abuse its discretion in denying defendant's pretrial motion to require plaintiffs to produce and permit defendant to inspect and copy physicians' reports of their examinations and treatment of plaintiffs after accident, as such reports were privileged and hence not subject to discovery. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

15. Professional capacity

The doctor-patient privilege extends only to information the physician acquires in attending a patient in a professional capacity, but such privilege does not include information obtained merely by an examination. *Browne* v. *Brooke* (1956, 236 F. 2d 686, 98 U.S. App. D.C. 391).

The doctor-patient privilege will not attach to an examination of a patient by a physician, if the person examined is capable of forming a judgment on the subject and understands that the physician is not attending or treating him, but if not capable of forming such a judgment the question of the physician's status must be determined objectively. *Id.*

Where physician testified that no normal patient-physician relationship existed between him and testatrix when he conducted an examination of her, and that she was under no misapprehension that there was such a relationship, his testimony as to the unsoundness of testatrix's mind when he conducted such examination was not privileged. *Id.*

If psychiatrist at mental hospital was examining physician, disclosures made by him by murderer might come within exception to privilege, in that physician who does not treat prisoner but only examines him in order to testify about his condition may testify as to such fact. *Kendall* v. *Gore Properties* (1956, 236 F. 2d 673, 98 U.S. App. D.C. 378).

16. Public justice

Under this section the application of the criterion "public justice" is a matter of discretion with the trial judge, *Catoe* v. *U.S.* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

17. Purpose

This section is intended to protect interests of the patient, and person with whom patient deals cannot insist upon the disqualification of physician to prejudice and over objections of persons who stand in the patient's shoes. *Calhoun* v. *Jacobs* (1944, 141 F. 2d 729, 79 U.S. App. D.C. 29).

18. Review

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas* v. *United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

19. Subsequent examination by physician

Plaintiff calling a physician to testify as to his physical condition at a certain time does not waive the right to object to the testimony of a physician who made an examination at a different time. *Mays* v. *New Amsterdam Cas. Co.* (40 App. D.C. 249, 46 L.R.A., N.S., 1108, certiorari denied 35 S. Ct. 662, 238 U.S. 624, 59 L. Ed. 1494). See, also, *Prudential Inc. Co.* v. *Lear* (31 App. D.C. 184); *Baltimore & O. R. Co.* v. *Morgan* (35 App. D.C. 195).

20. Waiver

Any physician-patient privilege which existed between defendant and psychiatrist was waived by psychiatrist's testimony relating to defendant's mental faculty to formulate and harbor larcenous intent, and government had thereupon right to cross-examine psychiatrist to explore underlying basis for his opinion, and, in so doing, could properly ask whether defendant had informed psychiatrist defendant was under arrest on charge of falsifying statements. *A. A. Dani* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 736).

In personal injury suit, defendant's mere willingness to furnish plaintiff a copy of defendant's medical examiner's report on his examination of plaintiff after accident, as stated in defendant's pretrial motion to require plaintiff to produce and permit defendant to inspect and copy plaintiff's physicians' reports of their examinations and treatment of plaintiff, did not entitle defendant to demand such reports under civil procedure rule, where plaintiff had not requested or received report of defendant's medical examiner nor taken his deposition and hence had not waived privilege of plaintiff's physicians' reports. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

Life policy provision waiving privilege against disclosure of information acquired through confidential treatment by physician was sufficient waiver of statutory privilege regarding testimony of physician. *New York Life Ins. Co.* v. *Taylor* (1945, 147 F. 2d 297, 79 U.S. App. D.C. 66).

Where attorneys in personal injury action exchanged reports of doctors who examined plaintiff, any privilege which might have existed with respect to testimony of one doctor who examined the plaintiff for purposes of testifying was waived. *Fisher* v. *Small et al.* (D.C. Mun. App. 1960, 166 A. 2d 744).

In action on industrial life policy with defense of violation of policy provisions respecting hospital treatment of insured, where hospital records concerning insured were admitted in evidence, claimant did not waive privi-

lege of this section by signing a form for sole purpose of proving death of the insured, where form contained no waiver of physician-patient privilege in express terms. *Ferguson* v. *Quaker City Life Ins. Co.* (D.C. Mun. App. 1957, 129 A. 2d 189).

This section does not apply where there was an application for the policy, signed by insured, and a purported waiver of the privilege; moreover, it is not important whether the hospital records were privileged before trial because it is clear that any privilege which might have existed was fully waived when they were put in evidence by plaintiff at the trial. *Mutual Benefit Health and Accident Association* v. *McGinn* (D.C. Mun. App. 1950, 75 A. 2d 643).

21. War risk insurance

In action on war risk insurance policy by the mother of insured, who claimed that insured had become permanently and totally disabled, by failure of his mind, at and before the time the policy lapsed, the report of the examination of insured by a physician was admissible in evidence, the insured himself having sent it to the Veterans' Bureau, but so far as the physician's opinions were based on information received in professional confidence, they should be excluded. *United States* v. *Witbeck* (1940, 113 F. 2d 185, 72 App. D.C. 231).

§ 14–308. Assessment officials as expert witnesses in condemnation proceedings.

In an action for the condemnation of lands, an official or other employee of the District, charged with the duty of appraising real property for assessment purposes, is not disqualified, by reason of the fact that he is so employed, from testifying as an expert witness to the market value of lands, and as to benefits. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–309 (Feb. 11, 1932, ch. 39, 47 Stat. 48).

Section 14–309 of D.C. Code, 1961 ed., referred to the Assessor of the District; but in this section the provisions are revised to refer to "an official or other employee of the District, charged with the duty of appraising real property for assessment purposes". Reorganization Order No. 20, Nov. 10, 1952, as amended, of the Board of Commissioners, abolished the Office of the Assessor, and among other things provided that the Finance Officer, whose office it created, should be the Assessor and the head of a new Office of the Assessor also created thereby as one of several offices set up within the Finance Office. Under the Board's Reorganization Order No. 121, 57–3276, dated Dec. 12, 1957, as amended, which, like Reorganization Order No. 20, was issued under authority of the President's Reorganization Plan No. 5 of 1952, and which superseded Reorganization No. 20, as amended, the appraisement of real property for assessment purposes is one of the functions of the Property Tax Division, one of several divisions set up by Order No. 121 within the Finance Office, all under the general supervision and control of the Finance Officer. Order No. 121, does not provide that the Finance Officer shall be the "Assessor". However, the Board of Commissioners has the authority, under the President's Reorganization Plan No. 5 of 1952, referred to above, to change offices and functions at any time, and, under Reorganization Order No. 121, also referred to above, the Finance Officer has the authority to reassign functions. For these reasons, the provisions of this section are rephrased in the general terms quoted above.

Other changes are made in phraseology.

§ 14–309. Clergy.

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the courts of the District of Columbia with respect to any—

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3) communication made to him, in his professional capacity, by either spouse, in connection with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–310 (Sept. 26, 1961, Pub. L. 87–318, 75 Stat. 681).

Changes are made in phraseology.

Chapter 5.—DOCUMENTARY EVIDENCE

Sec.
14–501. Proof of record.
13–502. Records of deeds, instruments, and wills.
14–503. Record of will as prima facie evidence of contents and execution.
14–504. Force in District of Columbia of wills probated elsewhere.
14–505. Municipal ordinances and regulations.
14–506. Certified mail return receipts as prima facie evidence of delivery.
14–507. Other methods of proof.

§ 14–501. Proof of record.

An exemplification of a record under the hand of the keeper of the record, and the seal of the court or office where the record is made, is good and sufficient evidence to prove a record made or entered in any State, territory, commonwealth or possession of the United States. The certificate of the person purporting to be the keeper of the record, accompanied by the seal, is prima facie evidence of that fact. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–501 (Mar. 3, 1901, ch. 854, § 1070, 31 Stat. 1358).

The methods of proof in this chapter are additional to those authorized by other laws and rules of court; see section 14–506 herein.

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in phraseology.

Cross References

Articles of association of fraternal benefit association as prima facie evidence of existence and due incorporation, see § 35–909.

Authentication of papers by superintendent of insurance, effect, see § 35–401.

Certified copies of certificate of incorporation presumptive evidence of facts therein stated, see § 29–236.

Corporate stock books presumptive evidence of fact contained therein, see § 29–226.

Stock book of domestic life insurance company presumptive evidence of facts therein contained, see § 35–515.

Transcribed copy of proceedings before public utilities commission admissible as evidence, see § 43–421.

Upon division of insurance business of fraternal benefit association, original policies prima facie evidence of liability of successor corporation, see § 35–925.

Federal Rules of Civil Procedure

Proof of official records, see Rule 44, U.S. Code, Title 28, Appendix.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Proof of judgment

Where no issue is raised regarding the jurisdiction of the justice of the peace rendering the judgment, a properly certified transcript of the docket entries showing service of process upon the defendant and jurisdiction of the subject matter is sufficient to support a judgment in another state. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

§ 14–502. Records of deeds, instruments, and wills.

Under the hand of the keeper of a record and the seal of the court or office in which the record was made:

(1) a copy of the record of a deed, or other written instrument not of a testamentary character, where the laws of the State, territory, commonwealth, possession or country where it was recorded require such a record, and that has been recorded agreeably to those laws; and

(2) a copy of a will that the laws require to be admitted to probate and record by judicial decree, and of the decree of the court admitting the will to probate and record—

are good and sufficient prima facie evidence to prove the existence and contents of the deed, will, or other written instrument, and that it was executed as it purports to have been executed.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–402 (Mar. 3, 1901, ch. 854, § 1071, 31 Stat. 1358).

In par. (1), reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in arrangement and phraseology.

CROSS REFERENCES

Certain irregular deeds legalized, see § 45–504.

Transcript of surveyor's records, see § 1–611.

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof 1
Jurisdiction 2
Maryland probate 3

1. Burden of proof

When will is contested for want of mental capacity, proponent who introduces it in support of her title, has burden of proof. *Prall* v. *Prall* (1926, 13 F. 2d 305, 56 App. D.C. 333, motion granted in part 15 F. 2d 735, 56 App. D.C. 336).

2. Jurisdiction

Where testamentary trust named cotrustees, and realty comprising part of trust res was located in District of Columbia, Ohio judgment appointing sole trustee in effect purported to change title to realty in District of Columbia by vesting it in one trustee, instead of two as provided by will, and in such respect, Ohio court was without jurisdiction over subject matter, and judgment was not entitled to full faith and credit. *Hughes et al.* v. *Hughes* (1953, 112 F. Supp. 899).

3. Maryland probate

Sufficiency of authentication under this section of copy of will probated in Maryland. *Scott* v. *Herrell* (27 App. D.C. 395). See, also, *Droop* v. *Ridenour* (11 App. D.C. 224).

§ 14–503. Record of will as prima facie evidence of contents and execution.

A record of a will or codicil recorded in the office of the Register of Wills of the District of Columbia, that has been admitted to probate by the United States District Court for the District of Columbia, or by the former orphans' court of the District, or a record of the transcript of the record and probate of a will or codicil elsewhere, or of a certified copy thereof filed in the office of the Register of Wills, is prima facie evidence of the contents and due execution of the will or codicil. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–403 (July 9, 1888, ch. 597, 25 Stat. 246; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. In general

The statute assumes the probates to have been lawfully made; and it no more undertakes to define or to regulate the jurisdiction of the courts of probate of the District for the future, than it does the jurisdiction of those courts in the past, or the jurisdiction of the courts elsewhere whose proceedings filed in the District are equally made evidence. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

Where will had been admitted to probate before caveat was filed, caveatee was entitled to rely on record of probate as her prima facie proof of due execution. *Flocken* v. *Di Gennaro et al.* (1951, 187 F. 2d 513, 88 U.S. App. D.C. 133).

§ 14–504. Force in District of Columbia of wills probated elsewhere.

A record in the office of the Register of Wills for the District of Columbia of a duly certified copy, or transcript of the record of proceedings, admitting a will or codicil to probate outside of the District of Columbia; and a record in that office of a will or codicil admitted to probate in the District before June 8, 1898, and not annulled or declared void according to law prior to June 8, 1898, shall be deemed and held as of the same force and effect as if the will or codicil had been duly proved and admitted to probate and record pursuant to sections 19–301 to 19–303. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–404 (June 8, 1898, ch. 394, § 10, 30 Stat. 437).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Jurisdiction

Decree appointing sole trustee of testamentary trust which named cotrustees, one of whom refused to serve, was entitled to full faith and credit if court awarding decree had jurisdiction, but was open to challenge if jurisdiction was lacking. *Hughes et al.* v. *Hughes* (1953, 112 F. Supp. 899).

Ohio court had power to compel execution of deed by parties personally before it, and thereby could indirectly affect realty beyond its territorial jurisdiction, but could not affect realty which was located in District of Columbia and which had been devised to cotrustees where one of the trustees was not before the court. *Id.*

§ 14–505. Municipal ordinances and regulations.

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified by the secretary or an assistant secretary of the Board of Commissioners; and the certified copy is prima facie evidence of the due adoption and promulgation of the ordinances and regulations. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–406 (Apr. 19, 1920, ch. 153, § 1073b, 41 Stat. 567).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissibility 1
Judicial notice 2

1. Admissibility

In action for injuries sustained in automobile collision, court properly refused to receive traffic regulations defining intersection in evidence, where both parties conceded that collision occurred out of intersection. *Coleman* v. *Chudnow* (D.C. Mun. App. 1944, 35 A. 2d 925).

2. Judicial notice

In prosecution for violating ordinance regulating blackouts, the ordinance was not required to be introduced in evidence, since the municipal court would take notice of the ordinance. *Dibble* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 825).

§ 14–506. Certified mail return receipts as prima facie evidence of delivery.

Return receipts for the delivery of certified mail which is utilized under any provision of law shall be received in the courts as prima facie evidence of delivery to the same extent as return receipts for registered mail. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–407 (June 11, 1960, Pub. L. 86–507, § 2, 74 Stat. 204).

Section 2 of the act of June 11, 1960, cited above, which was classified as section 14–407 of D.C. Code, 1961 ed., also relates to courts outside the District of Columbia. Hence, it is not included in the schedule of repeals in the bill to enact this revised part.

§ 14–507. Other methods of proof.

This chapter does not prevent the proof of records or other documents by any method authorized by other laws or rules of court. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1.)

Revision Notes

This section is inserted to make it clear that the methods of proof provided for by this chapter are additional to, and do not supersede, the methods authorized by 28 U.S.C. §§ 1731–1745; Rule 44, respectively, of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules; Rule 27 of the Federal Rules of Criminal Procedure; Rule 30 of the Court of General Sessions Criminal Rules; and any other provisions of the D.C. Code on this subject.

Chapter 7.—ABSENCE FOR SEVEN YEARS

14–701. Presumption of death.
14–702. Person presumed dead found living.

§ 14–701. Presumption of death.

If a person leaves his domicile without a known intention of changing it, and does not return or is not heard from for seven years from the time of his so leaving, he shall be presumed to be dead in any case where his death is in question, unless proof is made that he was alive within that time. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1951 ed., § 14–401 (Mar. 3, 1901, ch. 854, § 252, 31 Stat. 1230).

Changes are made in phraseology.

Cross References

Administration of estates of absentees and absconders, see § 20–701 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Common law 2
Evidence 3
Failure to hear 4
Foreign insurance company 5
Generally 1
Historical 6
Rebuttal of presumption 7
Time of death 8

1. Generally

Under this section enacting common-law presumption of death arising from absence for seven years, in order to raise presumption of death the absentee must leave his domicile, without any known intention of changing it, and not return or be heard from for seven years. *Jemison* v. *Metropolitan Life Ins. Co.* (1943, 32 A. 2d 704).

2. Common law

The statutory presumption of death arising from absence of seven years is but a declaration of the common-law rule. *Jemison* v. *Metropolitan Life Ins. Co.* (1943, 32 A. 2d 704).

3. Evidence

Evidence was insufficient to support statutory presumption of insured's death arising from absence for seven years, so as to authorize recovery on life policy, where insured was not living with his family at time of his disappearance but had a fixed abode in another State, and it did not appear that any inquiry concerning insured's whereabouts had been made in city in which he had his abode at the time of his disappearance. *Jemison* v. *Metropolitan Life Ins. Co.* (1943, 32 A. 2d 704).

4. Failure to hear

Mere failure of insured's family to hear from insured for more than seven years was not sufficient to raise presumption of death, so as to authorize recovery on life policy, where insured was not living with his family but had a fixed abode in another State. *Jemison* v. *Metropolitan Life Ins. Co.* (1943, 32 A. 2d 704).

5. Foreign insurance company

Insurance company, although incorporated elsewhere, can not effectively adopt by-law seeking to overcome presumption of death from long-continued absence. *National Union* v. *Sawyer* (42 App. D.C. 475).

6. Historical

There is no presumption of death from an absence of less than seven years, unless it appears that during that time the absent person "encountered some specific peril, or within that period came within the range of some impending or immediate danger, which might reasonably be expected to destroy life," or that he disappeared under circumstances inconsistent with a continuation of life. *Groff* v. *Groff* (36 App. D.C. 560). See, also, *Angell* v. *Groff* (42 App. D.C. 198); *Hamilton* v. *Rathbone* (9 App. D.C. 48, reversed on other grounds 20 S. Ct. 155, 175 U.S. 414, 44 L. Ed. 219).

"The common-law presumption of death was made statutory, and the statute declares the public policy of the District in that respect." *National Union* v. *Sawyer* (42 App. D.C. 475).

7. Rebuttal of presumption

Presumption of death after seven years under § 252 of 1901 Code (this section) is rebutted by the appearance of insured at the trial. *La Raw* v. *Prudential Ins. Co.* (1928, 22 F. 2d 717, 57 App. D.C. 289).

8. Time of death

Under this section, there is no presumption concerning the time when the person died. *Jones* v. *Metropolitan Life Ins. Co.* (1941, 116 F. 2d 555, 73 App. D.C. 92).

There is no presumption as to the time of death. *Hamilton* v. *Rathbone* (9 App. D.C. 48, reversed on other grounds 20 S. Ct. 155, 175 U.S. 414, 44 L. Ed. 219).

§ 14–702. Person presumed dead found living.

If the person presumed to be dead pursuant to section 14–701 is found to be living, a person injured by the presumption shall be restored to the rights of which he was deprived by reason of the presumption. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–502 (Mar. 3, 1901, ch. 854, § 253, 31 Stat. 1230).

Changes are made in phraseology.

TITLE 15.—JUDGMENTS AND EXECUTIONS—FEES AND COSTS

DISTRIBUTION TABLE

For disposition of former sections of this title, see table preceding Title 11.

Chap.		Sec.
1.	Judgments and Decrees	15–101
3.	Enforcement of Judgments and Decrees	15–301
5.	Exemptions and Trial of Right to Seized Property	15–501
7.	Fees and Costs	15–701

Chapter 1.—JUDGMENTS AND DECREES

SUBCHAPTER I.—GENERALLY

Sec.
15–101. Enforceable period of judgments—expiration.
15–102. Lien of judgment, decree, or forfeited recognizance.
15–103. Effect of revival.
15–104. Priority of liens.
15–105. Decree confirming sale of property—Effect—Ordering conveyance.
15–106. Judgment and damages assessed in actions on bonds or penal sums.
15–107. Setting off judgments.
15–108. Interest on judgment for liquidated debt.
15–109. Interest on judgment for damages in contract or tort.
15–110. Interest on judgment on contracts made elsewhere.
15–111. Counsel fee in proceeding on bond or undertaking.

SUBCHAPTER II.—COURT OF GENERAL SESSIONS

15–131. Judgments and executions generally—Interest.
15–132. Enforceable period of judgments—Effect of docketing in District Court—Domestic Relations Branch.
15–133. Satisfaction of judgment—Recordation.
15–108. Interest on judgment for liquidated debt.
15–109. Interest on judgment for damages in contract or tort.
15–110. Interest on judgment on contracts made elsewhere.
15–111. Counsel fee in proceeding on bond or undertaking."

AMENDMENT

1964—Section 3(b)(2) of act Aug. 30, 1964, amended the analysis of subchapter I of chapter 1, title 15, by adding section 15–108 to 15–111.

SUBCHAPTER I.—GENERALLY

§ 15–101. Enforceable period of judgments—Expiration.

(a) Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the:

(1) United States District Court for the District of Columbia; or

(2) civil division of the District of Columbia Court of General Sessions, when certified to and docketed in the clerk's office of the District Court—

is enforceable, by an execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution.

(b) At the expiration of the twelve-year period provided by subsection (a) of this section, the judgment or decree shall cease to have any operation or effect. Thereafter, except in the case of a proceeding that may be then pending for the enforcement of the judgment or decree, action may not be brought on it, nor may it be revived, and execution may not issue on it. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§11–751a, 15–101, 15–102, (Mar. 3, 1901, ch. 854, §§ 1212, 1213, 31 Stat. 1381; June 30, 1902, ch. 1329, 32 Stat. 542; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 15–101 and 15–102 of the D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "final judgment or final decree" are substituted in subsec. (a) for the reference in section 15–101 of the D.C. Code, 1961 ed., to final judgment "at common law" and final decree "in equity" as, in civil matters, there is now only one form of action in the District Court and in the Court of General Sessions, known as a "civil action". See Rule 2 of the Federal Rules of Civil Procedure and Rule 2 of the civil rules of the Rules of the Court of General Sessions.

In subsec. (a), words "or from the date of the last order of revival thereof" are substituted for words in section 15–101 of D.C. Code, 1961 ed., "or from the date of the last revival thereof under scire facias". The writ of scire facias was abolished, with respect to all district courts, by Rule 81(b) of the Federal Rules of Civil Procedure, which further provides that the relief theretofore available by scire facias may be obtained by appropriate action or motion under the practice prescribed in those rules. In the United States District Court for the District of Columbia, a judgment may be revived by motion and hearing. See Rule 30 of that Court's local civil rules.

For the same reason as given above words "nor may it be revived" are, in subsec. (b), substituted for "nor any scire facias [issued]" which appeared in section 15–102 of D.C. Code, 1961 ed.

When sections 15–101 and 15–102 of D.C. Code, 1961 ed., were enacted in 1901, the reference in section 15–101 to the municipal court read "justice of the peace court". The act of 1909, cited above, changed the name to "municipal court". The court continued to have civil jurisdiction only until its merger in 1942 with the Police Court. Now (as the Court of General Sessions), it has a civil division and a criminal division. Therefore, for the purpose of clarity, in clause (2) of subsec. (a) of this section, "civil division of the District of Columbia Court of General Sessions" is substituted for the reference in section 15–101 of D.C. Code, 1961 ed., to the "municipal court".

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Action of account, see § 16–101.

Adoption proceedings, final or interlocutory decree, see § 16–218.

Foreign judgments, see § 12–307.

Interest on judgments, see §§ 15–108 to 15–110.

Partnerships, judgment against partners, see §§ 41–118, 41–127.

NOTES TO DECISIONS UNDER PRIOR LAW

Abrogation of common law 2
Decisions under prior laws 3
Historical 4
In general 1
Motions 5
Municipal court judgment 6
Prior judgment 7
Recognizance 8
Revival 9
Tolling of statute of limitations 10
Validity of extension order 11

1. In general

This section must be considered when construing § 1535c of the 1901 Code (§ 13–214). *International Exch. Bank* v. *Pullo* (1923, 285 F. 933, 52 App. D.C. 199).

Judgment of condemnation before ultimate determination of all claims in case has been had does not, in all circumstances, operate to permit garnishee, without risk of liability, to release balance of assets garnished, and matter depends on determination as to which of the parties, plaintiff or garnishee, was at fault in permitting situation to develop. *J. M. Zamoiski Co.* v. *Discount Sales Co.* (1960, 187 F. Supp. 663).

Where garnishee, before it was called on to pay out any attached money, received letter from plaintiff's counsel stating that plaintiff had moved for summary judgment in certain amount, and that such sum would be condemned as soon as judgment was entered, and that it would be necessary for garnishee to hold balance of attached funds until determination of case, and thereafter partial judgment and judgment of condemnation had thereon both recited that the judgment was a partial judgment, and garnishee inadvertently released balance of attached funds before final judgment was entered for plaintiff, plaintiff was entitled to satisfaction of the final judgment by condemnation. *Id.*

2. Abrogation of common law

Sections 1212 to 1215, inclusive [§§ 15–101 to 15–103, 15–107], and § 1078 of the code [§ 15–205] completely abrogate the rule of the common law on the subject of the limitation and revival of judgments in the District of Columbia. "Twelve years is fixed by statute as the life of a judgment under our code, and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson* v. *Minnix* (30 App. D.C. 582).

3. Decisions under prior laws

See *Mann* v. *Cooper* (2 App. D.C. 226). See, also, *Galt* v. *Todd* (5 App. D.C. 350); *Mann* v. *McDonald* (6 App. D.C. 548).

4. Historical

"This section [section 12–203] prescribes two rules of limitation. By the first, all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than ten years before the commencement of the action. On June 30, 1902, section 1267 [section 12–203] was amended by striking therefrom the last part * * * in which the second rule aforesaid is embodied." *McKay* v. *Bradley* (26 App. D.C. 449).

5. Motions

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. 186, 52 A.L.R. 2d 667).

6. Municipal court judgment

A judgment of the municipal court docketed in the Supreme Court was enforceable for 12 years from the date it was so docketed. *Brown* v. *Allen E. Walker & Co.* (1928, 26 F. 2d 545, 58 App. D.C. 173).

7. Prior judgment

Where plaintiff brought suit against United States based upon a prior judgment, and no issues were raised not already litigated, and plaintiff sought nothing more than reaffirmation of first judgment, the first judgment was a bar to instant suit. *Citizens Bank and Trust Co. etc.* v. *United States* (1957, 240 F. 2d 863, 100 U.S. App. D.C. 1, certiorari denied 78 S. Ct. 31, 355 U.S. 825, 2 L. Ed. 2d 38, rehearing denied 78 S. Ct. 146, 355 U.S. 885, 2 L. Ed. 2d 115).

8. Recognizance

A fortified recognizance is not a "judgment" within this section fixing period of limitation in which a judgment is enforceable by execution. *Walsh* v. *United States* (1955, 220 F. 2d 488, 95 U.S. App. D.C. 123).

9. Revival

Judgments not satisfied, and not revived within 12-year period of limitations, were extinct, and no longer subsisted, for purposes of execution thereon. *G. A. Lee* v. *G. A. England et al.* (1962, 206 F. Supp. 957).

Judgment becomes extinct at expiration of 12 years unless revived by scire facias within that time. *Dutton* v. *Parish* (34 App. D.C. 393).

10. Tolling of statute of limitations

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitations was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson* (1950, 181 F. 2d 615, 86 U.S. App. D.C. 227, certiorari denied 70 S. Ct. 1030, 339 U.S. 981, 94 L. Ed. 922).

11. Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15–102. Lien of judgment, decree, or forfeited recognizance.

(a) Every:

(1) final judgment or unconditional final decree for the payment of money, from the date when it is rendered;

(2) judgment or decree rendered in the civil division of the District of Columbia Court of General Sessions, when docketed in the clerk's office of the United States District Court for the District of Columbia; and

(3) recognizance taken by the United States District Court for the District of Columbia, or judge thereof, from the time when it is declared forfeited—

is a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by the judgment, decree, or recognizance, in any land, tenements, or hereditaments in the District of Columbia, whether the estates are in possession or are reversions or remainders, vested or contingent.

(b) A recognizance taken in the criminal division of the Court of General Sessions, after being forfeited, may be transmitted to the clerk's office of the District Court and docketed therein in the same manner as judgments rendered in the civil division of that court, with the same effect as if taken in the District Court.

(c) Liens created as provided by this section continue as long as the judgment, decree, or recognizance is in force or until it is satisfied or discharged. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–103 (Mar. 3, 1901, ch. 854, § 1214, 31 Stat. 1381; June 30, 1902, ch. 1329, 32 Stat. 542; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991;

May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from section 15–103 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (a), the reference "civil division of the District of Columbia Court of General Sessions" is substituted for "municipal court", and, in subsec. (b), the reference "criminal division of the Court of General Sessions" is substituted for "municipal court". See revision note under section 15–101 herein.

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Docketing judgments rendered in municipal court, see § 15–132.

Execution on forfeited recognizance, see § 16–709.

Issuance of execution, see § 15–302.

Purchase money lien, see § 15–104.

NOTES TO DECISIONS UNDER PRIOR LAW

Acquisition after judgment, real estate 1
Conveyance, real estate 2
Creditors 3
Effective date of lien 4
Equitable estate 5
Jury trial 6
Priority in time 7
Real estate 8
Acquisition after judgment 1
Conveyance 2
Trust encumbrance 10
Recognizance 9
Trust encumbrance, real estate 10
Vacation of judgment 11

1. Acquisition after judgment

Judgement lien attaches to after-acquired real estate by the judgment debtor, but only to the extent of actual title which the debtor has therein. *Atlas Portland Cement Co.* v. *Fox* (1920, 265 F. 444, 49 App. D.C. 292).

2. Conveyance, real estate

A judgment at law is not a lien upon real estate in the City of Washington, which, before the judgment was rendered, had been conveyed to trustees with a power of sale to secure the payment of the debts of the grantor described in the deed of trust. *Morsell* v. *First Nat. Bank* (1875, 91 U.S. 357, 1 Otto 357, 23 L. Ed. 436).

3. Creditors

The statutory reference to "creditors" in the recording acts includes a good faith judgment creditor holding a statutory lien obtained under the statute without the necessity of such creditor executing his lien by attachment or by filing a bill in equity. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U.S. App. D.C. 230).

4. Effective date of lien

Where Court of Appeals set aside district court judgment for plaintiff and remanded case for further proceedings, plaintiff's lien on defendant's real estate attached on date district court entered judgment in plaintiff's favor after remand. *F. S. Bowen Electric Co., Inc.* v. *J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

5. Equitable estate

A final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered. *Reilly* v. *Sabin* (1936, 81 F. 2d 259, 65 App. D.C. 125).

6. Jury trial

Where vendor conveyed property and grantee without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing deeds of trust against the property and foreclosure proceedings were thereafter commenced, vendor's suit for equitable relief against foreclosure proceedings and judgment creditors of the grantee was properly heard by the trial court without a jury, since the suit was addressed to the equity jurisdiction of the court. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U.S. App. D.C. 230).

7. Priority in time

A judgment prior in time will take priority over a subsequent judgment, as a lien against defendant's property, although the subsequent judgment debtor has been to considerable trouble and expense in uncovering debtor's equitable interests. *Ginder* v. *Giuffrida* (1933, 62 F. 2d 877, 61 App. D.C. 338).

8. Real estate

Where judgment was obtained for nonpayment of cost of an oil burner and a copy of the judgment was filed in the District Court as permitted by law, it became a lien upon appellant's real property. *Clark* v. *General Electric Credit Corp.* (D.C. Mun. App. 1950, 72 A. 2d 43).

9. Recognizance

A forfeited recognizance is not a "judgment" within statute fixing period of limitation in which a judgment is enforceable by execution. *Walsh* v. *United States* (1955, 220 F. 2d 488, 95 U.S. App. D.C. 123).

10. Trust encumbrance

Where the real estate involved was encumbered by two trusts, the provisions of this section are directly applicable. *Biggs* v. *Campbell* (46 App. D.C. 288). See, also, *Carroll* v. *Elkins* (1929, 29 F. 2d 638, 58 App. D.C. 265).

11. Vacation of judgment

Where, after action by real estate broker for commission allegedly due from defendant for sale of her house had been dormant for 2½ years, trial date was set but continuance was granted, and, three months later, default judgment for broker was entered subject to ex parte proof, and, 10 months later, judgment on ex parte proof was awarded broker, defendant would, when broker sought to enforce his lien five years later, be entitled to have judgment vacated, in absence of showing that proper notice had been given defendant, and even though defendant, pending settlement negotiations, had waited four months after receiving notice before moving to vacate judgment. *Cahan* v. *Cokas, etc.* (D.C. Mun. App. 1960, 166 A. 2d 266).

§ 15–103. Effect of revival.

An order of revival issued upon a judgment or decree during the period of twelve years from the rendition or from the date of an order reviving the judgment or decree, extends the effect and operation of the judgment or decree with the lien thereby created and all the remedies for its enforcement for the period of twelve years from the date of the order. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–107 (Mar. 3, 1901, ch. 854, § 1215, 31 Stat. 1381).

The provisions are reworded not only to make phraseological changes, but also to refer to "order of revival" and "order", rather than "scire facias" and "fiat". See revision note under section 15–101 herein.

CROSS REFERENCE

Execution against specific property, see § 16–555.

NOTES TO DECISIONS UNDER PRIOR LAW

Conversion into action 1
Motion 2
Scire facias 3
Sufficiency 4
Tolling of statute of limitations 5
Validity of extension order 6

1. Conversion into action

Scire facias is a judicial writ, which may, however, be converted into an action by appearance and plea thereto by defendant, and if not so converted, it remains a judicial writ merely, the life of which is ended and its force spent after a year and a day from the date of issuance. *Collins* v. *McBlair* (29 App. D.C. 354).

2. Motion

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

3. Scire facias

To support the scire facias, it is incumbent upon the plaintiff in the judgment to show that the judgment debtor had title to the land. *Roller* v. *Caruthers* (5 App. D.C. 368).

A plea to scire facias to revive a judgment entered upon power of attorney to confess judgment is sufficient which states that the defendant was never served with process, hadn't authorized anyone to appear for him, nor confessed judgment, nor waived service of process, nor submitted himself to the jurisdiction of the court. *Harper* v. *Cunningham* (8 App. D.C. 430).

4. Sufficiency

A scire facias to enforce a judgment, addressed to named parties as devisees of judgment debtor is fatally defective as it does not allege that judgment debtor was dead at the time the writ was issued, that he left a will under which addressees succeeded as sole devisees, and failed to describe this realty. *Waters* v. *Taylor* (1923, 284 F. 639, 52 App. D.C. 135).

5. Tolling of statute of limitations

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitation was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson* (1950, 181 F. 2d 615, 86 U.S. App. D.C. 227, certiorari denied 70 S. Ct. 1030, 339 U.S. 981, 94 L. Ed. 922).

6. Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

§ 15–104. Priority of liens.

The lien of a mortgage or deed of trust upon real property, given by the purchaser to secure the payment of the whole or any part of the purchase-money, is superior to that of a previous judgment or decree against the purchaser. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–108 (Mar. 3, 1901, ch. 854, § 1216, 31 Stat. 1381).

Changes are made in phraseology.

§ 15–105. Decree confirming sale of property—Effect—Ordering conveyance.

A decree confirming the sale of real or personal property sold pursuant to a decree, divests the right, title, or interest sold out of the former owner, party to the action, and vests it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale. The decree constitutes notice to all persons of the transfer of title when a copy thereof is registered among the land-records of the District. In particular cases, the court may order its officer or agent to make a conveyance, if that mode is deemed preferable. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–341, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–109 (R.S.D.C., § 793; Comp. Stat. D.C., p. 75, § 6).

The second reference to "decree" is substituted for "decree in equity", as, under the Federal Rules of Civil Procedure, there is only one form of action in district courts, which is designated as a "civil action". See Rule 2.

Changes are made in phraseology.

Cross Reference

Judgment in mortgage foreclosure, see § 45–616.

§ 15–106. Judgment and damages assessed in actions on bonds or penal sums.

(a) In a civil action on a bond or on a penal sum for the nonperformance of covenants or agreements contained in an indenture, deed, or writing, the plaintiff may assign as many breaches as he chooses. Damages shall be assessed for such breaches as he proves and judgment rendered for the whole penalty, but execution shall issue for as much only as is found in damages, with costs.

(b) In an action brought under subsection (a) of this section, upon judgment for the plaintiff on motion, default, or confession, the plaintiff may assign as many breaches as he chooses, the truth of which shall be determined. The damages shall be assessed and execution shall issue for such damages only, with costs.

(c) Payment into court, after entry of judgment and prior to the issuance of execution, of the amount of the damages and costs assessed, for the use of the plaintiff or his representatives, stays execution, and the stay shall be entered on the record. Payment to the plaintiff or his representatives, after execution, of the amount of the damages and costs assessed, together with all fees and other reasonable costs of execution, forthwith discharges the defendant's real and personal property from execution, and the discharge shall be entered on the record. However, the judgment shall remain as a security to the plaintiff or his representatives for any other breaches which he or they afterwards prove. From time to time, the plaintiff may, by motion and hearing, with reasonable notice to the defendant, assign other breaches, and damages shall be assessed for such breaches as he proves, with costs. Payment into court, before execution, or to the plaintiff or his representative, after execution, as herein described, has the same effect as hereinbefore directed.

(d) In proceedings under this section, the right of trial by jury, as to issues of fact and the amount of damages to be assessed, is preserved.

(e) This section is subject to section 28–2502 of this Code and to section 1874 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1, Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(a).)

Amendment

1964—Section 3(a) of act Aug. 30, 1964, amended subsection (e) by changing the reference from 28–2405 to 28–2502.

Revision Notes

Based on D.C. Code, 1961 ed., §§ 13–205, 15–111 (8 and 9 Wm. 3, ch. 11, § 8, 1697; Kilty Rep., p. 244; Alex Br. Stat., p. 604; Comp Stat. D.C., p. 69, § 14).

Section consolidates sections 13–205 and 15–111 of D.C. Code, 1961 ed., which respectively were derived from different parts of section 8 of the statute of 8 and 9 William III, chapter 11.

The statute of 8 and 9 William III was made applicable in the District of Columbia by section 1 of the Code of 1901 (act. Mar. 3, 1901, ch. 854, § 1, 31 Stat. 1189; D.C. Code, 1961 ed., § 49–301; see also, act Feb. 27, 1801, ch. 15, § 1, 2 Stat. 103). Prior to its enactment in 1697, in the common-law courts the plaintiff, if entitled to a recovery, was entitled to the penal sum, unless the amount was subsequently reduced in equity. The object of the statute was to empower, or perhaps require, common-law courts to limit recovery to the actual damages sustained, with costs, and thus obviate the necessity for the judgment debtor to go into equity for relief. In most jurisdictions,

its principles have been generally adopted, either by statute or as a part of the common law; and, in some jurisdictions, as apparently in the District of Columbia, the provision of the British statute permitting judgment for the full amount of the penal sum (to remain as security to the plaintiff for further breaches) but limiting each execution to the amount of damages actually sustained, with costs, is retained. See (in addition to sections 13–205 and 15–111 of D.C. Code, 1961 ed.) Illinois Revised Statutes 1955, ch. 110, § 53, as amended by L. 1955 (approved July 19, 1955), p. 2238 (2261), H.B. No. 439; Vermont Statutes Annotated, Title 12, § 5242 et seq.

Section 13–205 of D.C. Code, 1961 ed., provided as follows:

"In all actions which shall be commenced or prosecuted in any courts of record, upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury, upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or nihil dicit, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which a jury shall inquire of the truth of every one of those breaches, and assess the damages that the plaintiff shall have sustained thereby."

Section 15–111 of the Code provided, as follows:

"In any action upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed or writing contained in case the defendant or defendants, after judgment entered, and before any execution executed, shall pay unto the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages, so to be assessed, by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the lands, or goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing, contained, upon which the plaintiff or plaintiffs may have a scire facias upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or administrators suggesting other breaches of the said covenants, or agreements, and to summon him or them respectively to show cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof, upon a writ to be awarded in manner as aforesaid; and upon payment or satisfaction in manner as aforesaid, of such future damages, costs, and charges, as aforesaid, all further proceedings on the said judgment are again to be stayed, and so toties quoties, and the defendant's lands or goods shall be discharged out of execution, as aforesaid."

There may be a question as to how much of these old sections is still in force, considering later enactments. For example, section 28–2405 of D.C. Code, 1961 ed., provides, as follows: "A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond.". Section 1874 of Title 28, United States Code, provides, as follows: "In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.". It will be noted that in those provisions the judgment, if it is by default or confession of the defendant, is for the amount found to be due, rather than for the entire penal sum. But it does not seem that those two sections, even when taken together, supersede or cover all the provisions of sections 13–205 and 15–111 of D.C. Code, 1961 ed., and accordingly they are consolidated and brought into this revised section.

In the consolidation, the language is modernized, all surplusage omitted, and some of the provisions are changed to conform, as nearly as can be determined, with modern practice and procedure as established by court rules. To this end, "civil action" is substituted for "action", to conform with Rule 2 of the Federal Rules of Civil Procedure, which provides that in district courts there shall be one form of action, to be known as a "civil action". See, also, Rule 2 of the civil rules of the District of Columbia Court of General Sessions, which contains a similar provision.

In subsec. (b), "motion" is substituted for "demurrer", as demurrers were abolished by Rule 7(c) of the Federal Rules of Civil Procedure and Rule 7(c) of the civil rules of the Court of General Sessions. Under other provisions of those rules, the procedure under demurrer was superseded by procedure by motion. See, for example, Rules 7 and 12.

In subsec. (c) of this section, words "motion and hearing, with reasonable notice to defendant," are substituted for the reference in section 15–111 of the D.C. Code, 1961 ed., to scire facias. Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the remedies theretofore available thereby may be obtained by appropriate action or appropriate motion under the practice prescribed in those rules. See, also, Rule 30 of the local rules of the United States District Court for the District of Columbia, providing that a judgment may be revived against a judgment debtor on motion, with service of notice.

Subsec. (d) of this section preserves the right of jury trial as to issues of fact and the amount of damages to be assessed, in cases where such right exists. Section 13–205 provides for jury trial in the original action, even if the judgment was rendered by demurrer, confession, or "nihil dicit"; and a jury trial to assess further damages, under scire facias, in case of additional breaches, was implied in section 15–111 of the Code ("upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof"). However, it appears that in cases under the above-quoted section 1874 of Title 28, United States Code, where the judgment is by default or confession, the damages are assessed by a jury only if the sum is uncertain and either party requests that procedure. This right to demand a jury assessment is preserved in Rule 55 of the Federal Rules of Civil Procedure, relating to default judgments. Rule 55 of the civil rules of the Court of General Sessions is similar to Rule 55 of the Federal Rules of Civil Procedure, except that it contains no reference to according a right of trial by jury (to assess damages) if required by statute.

Subsec. (e), while new, makes no change in substance. It is inserted to make it clear that this section does not affect section 28–2405 of D.C. Code, 1961 ed., and section 1874 of Title 28, United States Code (both quoted above), and that it is subject to the provisions of those sections.

§ 15–107. Setting off judgments.

Where reciprocal claims between different parties have passed into judgments the court, on motion, may order that the judgments be set off against each other and satisfaction of both be entered to the amount of the smaller claim. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1909 (Mar. 3, 1901, ch. 854, § 1571, 31 Stat. 1424).

Words "in its discretion," are omitted as surplusage. A minor change is made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Authority discretionary

Where attorney was to be paid out of a judgment, his interest is in the nature of an equitable lien and the court ought not to exercise its discretionary authority and allow another judgment to be set off against it when the effect would be to absorb the fund out of which appellees are entitled to be paid. *Continental Casualty Co.* v. *Kelly* (1939, 106 F. 2d 841, 70 App. D.C. 320).

§ 15–108. Interest on judgment for liquidated debt.

In an action in the United States District Court for the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(b)(1).)

NOTES TO DECISIONS UNDER PRIOR LAW

Assessment by court 1
Compensation of special auditor 2
Interest before judgment 3
Interest not demanded 4
Liquidated debt 5
Rate of interest 5.50
Reforming the verdict 6
Termination of contract 7

1. Assessment by court

"We do not mean by this to rule that, in a case where no question is made by either the pleadings or evidence as to the payment of interest, the court would not be authorized, under the provisions of said section 1184 (this section), to direct the assessment of interest. In such a situation the finding of the jury would, under the statute, automatically carry interest." *Metzger* v. *Metzger* (35 App. D.C. 389).

2. Compensation of special auditor

It is the prevailing view that costs do not bear interest unless so provided by statute, and this section does not apply to special auditor upon decree of compensation. *Davis* v. *Fidelity & Deposit Co.* (1934, 73 F. 2d 118, 63 App. D.C. 395).

3. Interest before judgment

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges, *National Trucking & Storage Co., Inc.* v. *Pennsylvania Railroad Co.* (1956, 228 F. 2d 23, 97 U.S. App. D.C. 52).

In action to recover for board, including room, pretrial stipulation that sum of $50 per month for two people was a fair and reasonable sum did not turn the action for breach of contract into an action to recover "liquidated debt", and therefore plaintiff was not entitled to interest before judgment. *Shima* v. *Brown* (1943, 133 F. 2d 48, 77 U.S. App. D.C. 115, certiorari denied 63 S. Ct. 982, 318 U.S. 787, 87 L. Ed. 1154).

In action to recover for board, including room, where court erred in adding interest to jury's verdict from time action was filed, case was remanded with directions to enter judgment for damages assessed by jury with interest from time of entry of judgment until paid. *Id.*

4. Interest not demanded

This section and § 28–2708 do not charge a surety of government contractor with interest on claims of materialmen when there was no request or demand made. *London & Lancashire Indem. Co.* v. *Smoot* (1923, 287, F. 952, 52 App. D.C. 378).

5. Liquidated debt

Accommodation endorser's counterclaim against maker of note upon which endorser had incurred liability was for a liquidated amount and interest was payable by law and usage, and consequently under the District of Columbia statutes the interest should have been awarded from the date the obligation became due. *Rosden* v. *Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

Section 28–2708, permitting interest when jury determines that it is necessary to fully compensate the plaintiff, is not applicable where action is to recover liquidated indebtedness, and in such case this section is applicable. *Blustein* v. *Eugene Sobel Co., Inc.* (1959, 263 F. 2d 478, 105 U.S. App. D.C. 32).

In action for damages for breach of warranty in contract for purchase by plaintiff of capital stock of corporation engaged in wholesale jewelry business that corporation's books of account included accurate and complete record of all liabilities of corporation for income taxes, jury was properly directed to include interest on amount which plaintiff had paid for corporation's deficiency income taxes, penalty and interest from date tax was due, since indebtedness of defendant to plaintiff became a "liquidated debt" within meaning of this section providing for interest on judgments for a "liquidated debt," when settlement was entered into and payment was made by plaintiff in accordance with settlement. *Id.*

5.50. Rate of interest

Judgment for shipbuilder and ship company for balance due for construction of ship would include interest from date claims became due, and where rate was not fixed by contract, statutory six per cent rate would be applied. *Bethlehem Steel Co., Inc.* v. *Lykes Bros. Steamship Co. Inc.* (1964, 35 F.R.D. 344).

6. Reforming the verdict

Where in a suit on a promissory note for $2,500 (with interest at 6 per centum) the defendant files a plea of the general issue and the statute of limitations, and the jury returns a verdict for the plaintiff "in the sum of $2,500 and costs," the court, on appeal (in the absence of a bill of exceptions containing the evidence introduced), will reverse the action of the trial justice in reforming the verdict so as to include interest. *Metzger* v. *Metzger* (35 App. D.C. 389).

7. Termination of contract

All that the plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she had admitted. *Richards* v. *Bippus* (18 App. D.C. 293).

§ 15–109. Interest on judgment for damages in contract or tort.

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not preclude the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(b)(1).)

NOTES TO DECISIONS UNDER PRIOR LAW

In general 1
Interest before judgment 2
Liquidated debt 3
Special auditor 4
Trustee 5

1. In general

Under the statutory provision in this jurisdiction, vesting as it does a broad measure of discretion in the jury or trial court, the court should not lightly disturb the finding of the trial judge in allowing interest as an element of damage in action for breach of contract. *Flanaghan* v. *Charles T. Thompkins Co.* (1950, 182 F. 2d 92, 86 U.S. App. D.C. 307).

Neither an abuse of discretion by the trial court nor lack of compliance by it with the statutory standard govern the allowance of interest though uncertainties exist as to amounts due. The long delay of the special master in making his report is also an argument against awarding interest where these arguments are offset by other compensatory factors. *Dyker Bldg. Co., to Use of Parreco* v. *U.S.* (1950, 182 F. 2d 85, 86 U.S. App. D.C. 297).

2. Interest before judgment

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges. *National Trucking & Storage Co., Inc.* v. *Pennsylvania Railroad Co.* (1956, 228 F. 2d 23, 97 U.S. App. D.C. 52).

3. Liquidated debt

Beneficiary recovering from insurer on life policy would be entitled to interest on face amount, and rate would be statutory 6% per annum, where policy specified no rate of interest. *J. Messina* v. *Mutual Benefit Health and Accident Ass'n* (1964, 228 F. Supp. 865).

Accommodation endorser's counterclaim against maker of note upon which endorser had incurred liability was for a liquidated amount and interest was payable by law and usage, and consequently under the District of Columbia statutes the interest should have been awarded from the date the obligation became due. *Rosden* v. *Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

This section is not applicable where action is to recover liquidated indebtednes, and in such case section 28–2707 dealing with interest on judgments for liquidated debt is applicable. *Blustein* v. *Eugene Sobel Co., Inc.* (1959, 263 F. 2d 478, 105 U.S. App. D.C. 32).

4. Special auditor

Special auditor cannot recover interest upon decree of compensation, as this section provides an action to recover damages for breach of contract. *Davis* v. *Fidelity & Deposit Co.* (1934, 73 F. 2d 118, 63 App. D.C. 395).

5. Trustee

A trustee who purchases a second trust deed note at discount and thereafter purchases at his own foreclosure sale, attempting to enforce his personal lien, is nevertheless acting as trustee and beneficiary is entitled to an accounting of all profits on the sale as well as of interest and principal payments to trustee; trustee is entitled to reimbursement for reasonable and lawful expenses incurred and to interest on unpaid loan to trust. *Earll* v. *Picken* (1940, 113 F. 2d 150, 72 App. D.C. 91).

§ 15–110. Interest on judgment on contracts made elsewhere.

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in a State or territory of the United States where such a contract rate of interest is lawful, the judgment for the plaintiff shall include the contract interest to the date of the judgment and interest thereafter at the rate of 6 per cent per annum until paid. (Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509, § 3(b)(1).)

§ 15–111. Counsel fee in proceeding on bond or undertaking.

In a proceeding in the United States District Court for the District of Columbia to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction, the Court, in assessing damages to be recovered thereunder, may include such reasonable counsel fees as the party damaged by the restraining order or injunction may have incurred in obtaining a dissolution thereof. (Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509, § 3(b)(1).)

AMENDMENT

1964—Section 3(b)(1) of act Aug. 30, 1964, amended subchapter I of chapter 1 of title 15, by adding sections 15–108 to 15–111.

NOTES TO DECISIONS UNDER PRIOR LAW

Attorney fees allowed 1
Sureties 2

1. Attorney fees allowed

Attorney fees, incurred in procuring the dissolution of an injunction improperly issued, are recoverable as damages upon the injunction bond, whether the dissolution of the wrongful injunction be obtained by interlocutory or final decree. *Local Union No. 368* v. *Barker Painting Co.* (1928, 24 F. 2d 879, 58 App. D.C. 51).

Counsel fees are not allowed in action on injunction bond after successfully defending action on contract and defeating injunction. *Stanfield* v. *Vollbehr* (1932, 60 F. 2d 670, 61 App. D.C. 239).

Addition of $2,000 attorneys' fees as part of damages for wrongful injunction against sale of property under a trust deed was unauthorized under the circumstances. *Maiatico* v. *Mortgage Security Corp.* (1932, 60 F. 2d 1081, 61 App. D.C. 245).

2. Sureties

Interest in excess of maximum penalty of the undertaking may become due from surety but only because of surety's own default. *Cunningham* v. *Cunningham* (App. D.C. 1947, 157 F. 2d 859).

SUBCHAPTER II.—COURT OF GENERAL SESSIONS

§ 15–131. Judgments and executions generally—Interest

In civil cases within its jurisdiction, the District of Columbia Court of General Sessions may try, hear, and determine the matter in controversy between the parties upon their allegations and proofs, and give judgment according to law; and judgments for money rendered by it bear interest from their date until paid or satisfied, unless by the terms of the judgment interest runs from an earlier date. The court may issue writs of execution in cases in which it may render judgment. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–724, 11–751a (Mar. 3, 1901, ch. 854, § 12, 31 Stat. 1191; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 6, 41 Stat. 1311; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Liability for marshal's negligence 1
Liens statutory 2
Stay of judgment 3
Time limitation on judgment 4

1. Liability for marshal's negligence

If United States Marshal, acting within order of Municipal Court for District of Columbia issuing writ of restitution, negligently damaged property of tenant in moving it to sidewalk, neither landlord nor landlord's agent would be liable for the results of this negligence unless landlord or its agent participated in the wrongful act. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

2. Liens statutory

Competing judgment liens find their support in the statute and are governed by the statute without regard to equitable principles. *Ginder* v. *Guiffrida* (1933, 62 F. 2d 877, 61 App. D.C. 338).

3. Stay of judgment

Defendants, upon failing to present certain defense until after adverse decision by Municipal Court of Appeals, could not thereafter relitigate the issue upon their new theory in trial court by presenting motion for stay and for reconsideration. *Shay* v. *Randall H. Hagner & Co.* (D.C. Mun. App. 1944, 38 A. 2d 617).

4. Time limitation on judgment

It was provided by § 12, D.C. Code of 1901, as amended by act of Mar. 3, 1921 (41 Stat. 1311), that judgments of the municipal court of the District of Columbia remained in force for six years and no more after rendition unless docketed in the Supreme Court of the District. *Brown* v. *Allan E. Walker & Co.* (1928, 26 F. 2d 545, 58 App. D.C. 173).

§ 15–132. Enforceable period of judgments—Effect of docketing in District Court—Domestic Relations Branch.

(a) A judgment entered by the District of Columbia Court of General Sessions shall remain in force for only six years, unless it is docketed in the office of the clerk of the United States District Court for the District of Columbia. Upon being so docketed, the judgment has the same force and effect for all purposes as if it were a judgment of the District Court, and, until it is so docketed, it does not become a lien upon any real property in the District. The clerk of the District Court shall charge a fee of 50 cents for docketing the judgment.

(b) A judgment of the Domestic Relations Branch of the Court of General Sessions has the same legal status as a lien upon real property as a judgment of the District Court.

(c) Upon the payment of a fee of 50 cents, the clerk of the Court of General Sessions shall prepare a copy of any judgment of the civil division of the Court, that is in force. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–755 note, 11–763 (Mar. 3, 1921, ch. 125, § 6, 41 Stat. 1311; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Apr. 11, 1956, ch. 204, § 106, 70 Stat. 112; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171).

Section consolidates section 6 (41 Stat. 1311) of the act of Mar. 3, 1921, ch. 125, which was set out as a note under section 11–755 of D.C. Code, 1961 ed., and which related to the Municipal Court prior to its merger, by the act of Apr. 1, 1942, with the Police Court to form the second Municipal Court, with subsec. (c) of section 11–755 of D.C. Code, 1961 ed., which related to the second Municipal Court (formed from the 1942 merger), and with the second sentence of subsec. (b) of section 11–763 of the Code, which related to the Domestic Relations Branch of the second Municipal Court.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court referred to above) to the District of Columbia Court of General Sessions.

Section 6 of the act of Mar. 3, 1921, referred to above, provided, as follows:

"All judgments hereafter entered by said Municipal Court shall remain in force for six years and no longer, unless the same shall have been docketed in the office of the clerk of the Supreme Court of the District of Columbia as provided by law, in which event they shall be liens as is provided by Chapter XXXVIII of the Code of Law for the District of Columbia [sections 15–101 to 15–111, 15–201 to 15–218, 15–301 to 15–313, and 15–401 to 15–403 of D.C. Code, 1961 ed.] for judgments of justices of the peace. No judgment shall become a lien upon any lands, tenements, or hereditaments until so docketed."

Subsec. (c) of section 11–755 of the D.C. Code, 1961 ed., referred to above, provided, as follows:

"(c) All judgments entered by the Municipal Court for the District of Columbia [now, the District of Columbia Court of General Sessions] on or after the effective date of this Act [Act of Apr. 1, 1942] shall remain in force for six years and no longer unless the same be docketed in the office of the clerk of the United States District Court for the District of Columbia. Upon payment of a fee of 50 cents the clerk of the Municipal Court for the District of Columbia shall prepare a copy of any judgment of the said court whether heretofore rendered and in force and effective on the effective date of this Act or hereafter rendered, and the same upon being docketed with the clerk of said District Court shall have the same force and effect for all purposes as if it had been a judgment of said District Court. For the docketing of the same the clerk of said District Court shall charge a fee of 50 cents."

It would seem that, actually, the above-quoted subsec. (c) of section 11–755 of D.C. Code, 1961 ed., which was enacted in 1942, superseded the above-quoted section 6 of the act of Mar. 3, 1921, but, for the purpose of clarity, the provision of the latter that no judgment of the Municipal Court (now, Court of General Sessions), becomes a lien upon any real property in the District until docketed in the clerk's office of the District Court is carried forward into this revised section.

Words "on or after the effective date of this Act", which followed "All judgments entered by the Municipal Court for the District of Columbia" at the beginning of section 11–755(c) of D.C. Code, 1961 ed.; and words "whether heretofore rendered and in force and effective on the effective date of this Act or hereafter rendered" which in section 11–755(c) followed "shall prepare a copy of any judgment of the said court", are omitted as obsolete and unnecessary, in view of the period of time that has elapsed since section 11–755 was enacted (in 1942).

Changes are made in phraseology.

For remainder of section 11–755, see tables.

§ 15–133. Satisfaction of judgment—Recordation.

A judgment of the civil division of the District of Columbia Court of General Sessions, or execution thereon, may not be recorded as satisfied without the receipt of the plaintiff or his attorney annexed thereto. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–742, 11–751a (Mar. 3, 1901, ch. 854, § 28, 31 Stat. 1194; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "of the civil division of the Municipal Court" are inserted for the purpose of clarity. When enacted

in 1901, section 28 of the act of Mar. 3, 1901, cited above, from which the above-cited section 11–742 of D.C. Code, 1961 ed., was derived, while it made no reference to any court, was in a group of sections relating to justices of the peace, who had civil jurisdiction only. In 1909, the justice of the peace courts became the Municipal Court. Since the merger of the Municipal Court with the Police Court in 1942, when the second Municipal Court was established, the court (now, Court of General Sessions) has had a civil division and a criminal division, and it also has several special branches.

Changes are made in phraseology.

Chapter 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

Sec.
15–301. Definition and applicability.
15–302. Period during which writ of execution may issue—Returnable period.
15–303. Alias writs.
15–304. Return of writ.
15–305. Issuance of writ after expiration of period.
15–306. Election to move for new judgment in lieu of execution.
15–307. Lien of execution.
15–308. Endorsement, by marshal, of date of receipt of writ.
15–309. Death of judgment debtor after delivery of execution.
15–310. Lien of execution on Court of General Sessions judgment—Levy.
15–311. Property subject to levy.
15–312. Levy on money and evidences of debt.
15–313. Levy on equitable interest in chattels pledged.
15–314. Appraisement—Notice of sale.
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15–316. Subrogation of purchaser after defective sale—No refund.
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15–318. Remedies of purchaser upon refusal to deliver possession.
15–319. Execution of final decree after death—Other appropriate proceedings.
15–320. Enforcement of decrees.
15–321. Enforcement of interlocutory decrees.
15–322. Enforcement of decrees for delivery of chattels.
15–323. Limitation on seizure of real property.

§ 15–301. Definition and applicability.

As used in sections 15–302, 15–303, 15–305 to 15–307, 15–309, 15–310, 15–317, and 15–318, "judgment" includes an unconditional decree for the payment of money, and sections 15–302 to 15–318 are applicable to such a decree. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–218 (Mar. 3, 1901, ch. 854, § 1104, 31 Stat. 1362).

Section 15–218 of D.C. Code, 1961 ed., provided as follows:

"The aforegoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment.".

In the above-quoted provisions, the parenthetical reference, "(this chapter)", refers to chapter 2 of Title 15 of D.C. Code, 1961 ed., which contained the provisions carried into this revised section and sections 15–302 to 15–317 herein. As other provisions are also carried into this revised chapter, the provisions of section 15–218 of D.C. Code, 1961 ed., as herein set out, are reworded to refer to the sections containing the provisions to which section 15–218 related in D.C. Code, 1961 ed.

The provision that the decree may be revived by scire facias is omitted as obsolete. Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the relief theretofore available by that writ may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules. See, also, rule 54(a) of those rules providing that, as used in the rules, "judgment" includes a decree and any order from which an appeals lies, and rule 30 of the local rules of the United States District Court for the District of Columbia, which provides for revival of a judgment by motion and hearing. See, also, section 15–101 of this revised Part relating to the enforceable period of judgments and final decrees for the payment of money, and rule 54(a) of the civil rules of the Court of General Sessions, which, like Rule 54(a) of the Federal Rules of Civil Procedure, provides that, as used in those rules, "judgment" includes a decree and any order from which an appeal lies.

The remaining provisions are rewritten, but without change of substance. By providing that, as used in the sections cited, "judgment" includes an unconditional decree for the payment of money, and by making sections 15–302 to 15–318 herein applicable to any such decree, it is not necessary to retain the provision "and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment".

In the 1901 Code, section 1104 thereof, from which section 15–218 of D.C. Code, 1961 ed., was derived, also related to attachments after judgment and after the type of decree referred to in the section. Therefore, it is also carried into subchapter II of chapter 5 of Title 16 of this revised Part.

Cross Reference

Other provisions regarding decrees, see § 15–101 et seq.

§ 15–302. Period during which writ of execution may issue—Returnable period.

(a) A writ of execution on a judgment in a civil action may be issued within three years after:

(1) the expiration of any stay of execution agreed to by the parties; or

(2) it first might have been issued under applicable provisions of law or rules of court.

(b) A writ of execution shall be returnable on or before the sixtieth day after its date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–201 (Mar. 3, 1901, ch. 854, § 1074, 31 Stat. 1358).

Section 15–201 of D.C. Code, 1961 ed., cited above, provided as follows:

"Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter; and where the right to issue the same is suspended by any of the causes aforesaid said writ may be issued within three years after the removal of the suspension, and every such writ shall be returnable on or before the sixtieth day after its date.".

In this revised section, the provisions are, for the most part, rewritten to omit obsolete or superseded matter, and to have them conform with rules of court adopted since section 15–201 was enacted in 1901.

Rule 58 of the Federal Rules of Civil Procedure (which rules apply in the District Court), and rule 58 of the civil rules of the District of Columbia Court of General Sessions, both of which relate to entry of judgment, both provide that the judgment is not effective before entry. Rule 62 of the Federal Rules of Civil Procedure, and the civil rules of the District of Columbia Court of General Sessions, respectively, provide for stay of proceedings to enforce a judgment; and Rule 73 of the rules, respectively, relate to supersedeas bond to stay proceedings on appeal. Under Rule 62 of the Federal rules, there is an automatic stay of 10 days after entry of judgment, and under Rule 62 of the Court of General Sessions rules, there is an automatic stay of 5 days after the entry.

Those rules also cover such matters as stay on motion for new trial or for judgment, injunction pending appeal, stay upon appeal, stay in favor of the United States or an agency thereof, power of appellate court to say proceedings during pendency of an appeal, or to suspend, modify, restore or grant an injunction during the pendency, and stay of judgment upon multiple claims.

In view of these rules, it is only necessary to retain in subsec. (a) of this revised section the provision that a writ of execution on a judgment may be issued within 3 years after (1) the expiration of any stay of execution agreed to by the parties (which is not covered by said rules), and (2) the date on which it first might have been issued under applicable provisions of law or rules of court. Subsec. (a) is so reworded, accordingly. In clause (2), the reference to "law" is inserted for the purpose of covering cases of stay, if any, not covered by the rules referred to above.

CROSS REFERENCES

Disability insurance benefits, exemption from execution, see § 35–717.

Exemptions, see § 15–501 et seq.

Forfeited recognizance, execution on, see § 16–709.

Fraternal benefit association benefits not subject to execution, see § 35–911.

Group life insurance benefits, exemption from execution, see § 35–718.

Landlord's lien, execution to enforce, see §§ 45–916, 45–917.

Life insurance proceeds, exemption, see § 30–213.

Motor Vehicle Safety Responsibility Act, execution against money deposits in court, see § 40–480.

Rent, payment of before goods may be seized by execution, see § 45–918.

Social Security Act old-age assistance not subject to execution, see § 46–204.

Teacher's retirement annuity not subject to execution, see § 31–718.

Unemployment Compensation Act benefits not subject to execution except for necessaries, see § 46–318.

Wrongful death recovery, exemption of, see § 16–2703.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeal as a supersedeas 1
Construction with other laws 2
Executors and administrators 3
Final judgment 4
Power of court to vacate sale 5
Property subject to execution 6
Satisfaction by garnishee 7

1. Appeal as a supersedeas

"Unless an appeal operates as a supersedeas, execution of the judgment may be had immediately" *Byrne* v. *Morrison* (25 App. D.C. 72). See, also, *Sechrist* v. *Bryant* (1923, 286 F. 456, 52 App. D.C. 286).

The appellant appealed from the decree entered in the equity suit; but filed no supersedeas bond for a stay of execution upon the decree, and consequently a writ of execution might have issued at any time thereafter. *Fletcher* v. *Kellogg* (1925, 2 F. 2d 315, 55 App. D.C. 97).

2. Construction with other laws

If this section regarding issuance of execution was in conflict with subsequently adopted District of Columbia Emergency Rent Act, § 45–1601 et seq., to the extent of the conflict this section was required to give way to said § 45–1601 et seq. *Myers* v. *H. L. Rust, Co.* (1943, 134 F. 2d 417, 77 U.S. App. D.C. 218).

3. Executors and administrators

The code provides expressly for actions and judgments against executors and administrators and for the issuance of writs of fieri facias thereon, and there is no reason to doubt that this contemplates the use of attachment and garnishment. *Fishel* v. *Kite* (1940, 101 F. 2d 685, 69 App. D.C. 360, certiorari denied 59 S. Ct. 645, 306 U.S. 656, 83 L. Ed. 1054).

4. Final judgment

Decree of the Supreme Court of the District of Columbia in general term was not a final decree in the sense that a writ of execution can be issued upon it. *Bieber* v. *Fechheimer* (9 App. D.C. 548).

5. Power of court to vacate sale

Until the sheriff or marshal makes return of the writ and of the manner of his service of it, and the court is enabled to judge of the propriety of such service, the debtor can not be barred of his right of objection and to have the sale vacated on the ground of irregularity and it is only required of him that he should act promptly before any rights of innocent parties have intervened. *Hart* v. *Hines* (10 App. D.C. 366).

There is a difference between an attempt by a court to revise one of its judgments, after the expiration of the term in which that judgment was entered, and the assertion by the court of power to set aside an execution sale and this is especially true when the sale had not been confirmed by judicial order. *Shipley* v. *Shamwell* (41 App. D.C. 267, Ann. Cas. 1915A, 1148).

6. Property subject to execution

No property but that in which the judgment debtor has a legal title is subject to execution at law. *Starr* v. *United States* (8 App. D.C. 552, reversed on other grounds 17 S. Ct. 223, 164 U.S. 627, 41 L. Ed. 577).

7. Satisfaction by garnishee

A garnishee who, in good faith, satisfied a claim of attaching creditor without waiting for judgment against him, is not liable on a subsequent attachment. *Smith* v. *Shapiro* (1932, 57 F. 2d 432, 61 App. D.C. 66).

§ 15–303. Alias writs.

If a writ of execution is issued and returned unsatisfied, in whole or in part, within the period of three years provided by section 15–302, an alias writ may be issued during the life of the judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–202 (Mar. 3, 1901, ch. 854, § 1075, 31 Stat. 1358).

Changes are made in phraseology.

§ 15–304. Return of writ.

If the return of a writ of execution is not made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–203 (Mar. 3, 1901, ch. 854, § 1076, 31 Stat. 1358).

Changes are made in phraseology.

§ 15–305. Issuance of writ after expiration of period.

A writ of execution not issued within the time allowed therefor, may not be issued until the judgment has been revived. The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–204 (Mar. 3, 1901, ch. 854, § 1077, 31 Stat. 1359).

Section 15–204 of the D.C. Code, 1961 ed., cited above, provided, as follows:

"If said writ shall not be issued within the time allowed therefor, as aforesaid, it shall not be issued until a scire facias has been issued upon said judgment and a fiat shall be deemed a renewal of the judgment, and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment."

Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that relief therefore available by scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules; and Rule 30 of the local rules of the United States District Court provides for revival of a judgment by motion and hearing. Therefore in this revised section the words "may not be issued until the judgment has been revived" are substituted for "it

shall not be issued until a scire facias has been issued upon said judgment and a fiat has been rendered thereupon", and the words "The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment" are substituted for "Said fiat shall be deemed a renewal of the judgment and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment".

Other changes are made in phraseology.

Cross References

Decrees in equity, see § 15–309.
Extension of time of lien, § 15–103.

NOTES TO DECISIONS UNDER PRIOR LAW

Decisions under prior law 1
Defense 2
Validity of extension order 3

1. Decisions under prior law

"Twelve years is fixed by statute as the life of a judgment * * * and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson* v. *Minnix* (30 App. D.C. 582).

2. Defense

Bankruptcy of defendant may be pleaded as a defense, but such defense does not inure to the benefit of a co-defendant. *Simpson* v. *Minnix* (30 App. D.C. 582). See, also, *Otterback* v. *Patch* (5 App. D.C. 69); *Galt* v. *Todd* (5 App. D.C. 350); *Roller* v. *Caruthers* (5 App. D.C. 368); *Green* v. *Mann* (19 App. D.C. 243); *Moses* v. *United States* (19 App. D.C. 290).

3. Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15–306. Election to move for new judgment in lieu of execution.

During the life of the original judgment the plaintiff, instead of issuing execution thereon within the time allowed therefor, may elect to obtain a new judgment by motion and hearing as provided by rules of court. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–205 (Mar. 3, 1901, ch. 854, § 1078, 31 Stat. 1359).

Words "to obtain a new judgment by motion and hearing as provided by rules of court" are substituted for "to issue a scire facias on the same and obtain a new judgment as aforesaid". See revision note under section 15–305 herein.

NOTES TO DECISIONS UNDER PRIOR LAW

Motion 1
Validity of extension order 2

1. Motion

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

2. Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

§ 15–307. Lien of execution.

A writ of fieri facias issued upon a judgment of the United States District Court for the District of Columbia is a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except those that are exempted from levy and sale by express provision of law, and is also a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961, ed., § 15–206 (Mar. 3, 1901, ch. 854, § 1079, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646 § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

§ 15–308. Endorsement, by marshal, of date of receipt of writ.

Upon the receipt of any writ of fieri facias or other writ of execution, the marshal or his deputy shall, without fee, endorse upon the back of the writ the day of the month and year when he received it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–207 (29 Car. II, 1676, ch. 3, § 16; Alex. Br. Stat., p. 511; Comp. Stat., D.C., p. 222, § 1).

The substance of this British statute is still preserved in a number of American States. See, for example, Code of Ala. 1940, Title 7, § 525; Vermont Statutes Annotated, Title 12, § 2688; Ill. Rev. Stat. 1955, ch. 77, § 9; ch. 79, § 126; Del. Code 1953, Title 10, § 5084.

Reference to the coroner and to agents are omitted as obsolete.

Changes are made in phraseology.

§ 15–309. Death of judgment debtor after delivery of execution.

The death of the judgment debtor after the execution issued on the judgment has been delivered to the marshal does not affect his authority to proceed against the property bound by it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–208 (Mar. 3, 1901, ch. 854, § 1080, 31 Stat. 1359).

A minor change was made in phraseology.

§ 15–310. Lien of execution on Court of General Sessions judgment—Levy.

An execution issued on a judgment of the District of Columbia Court of General Sessions is not a lien on the personal property of the judgment debtor except from the time when it is actually levied, and then it has priority over any execution issued out of the United States District Court for the District of Columbia after the levy. It may not be levied on real estate. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–209 (Mar. 3, 1901, ch. 854, § 1081, 31 Stat. 1359; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873; § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Superiority of liens

Principle that, as between federal and state courts, comity requires that the court which first obtains actual or constructive possession of property in exercise of its jurisdiction be permitted to retain control without interference from the other is equally applicable to two court jurisdictions in District of Columbia, federal court and municipal court *S. Herman, Receiver etc.* v. *A. M. Siney and M. K. Oney* (D.C. App. 1963, 190 A. 2d 650).

District of Columbia Municipal Court judgment creditors who had caused writs of garnishment to be served on bank account of their judgment debtor had superior right to possession of attached funds over claims of receiver subsequently appointed by United States District Court. *Id.*

United States District Court's appointment of receiver did not divest lien previously acquired by Municipal Court garnishment writs issued on behalf of judgment creditors of party in receivership who were not themselves parties to District Court proceeding. *Id.*

A lien of garnishment is superior to lien of subsequent attachment against the same property. *International Finance Corp.* v. *Jawish* (1934, 71 F. 2d 985, 63 App. D.C. 262).

§ 15–311. Property subject to levy.

The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt from execution, and upon money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by the debtor, and upon his money in the hands of the marshal or his deputy or other officer or person charged with the execution of the writ. A writ of fieri facias issued from the United States District Court for the District of Columbia may be levied on all legal leasehold and freehold estates of the debtor in land. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–210 (Mar. 3, 1901, ch. 854, § 1082, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Reference to the "constable (coroner)" is omitted as obsolete, and in lieu thereof words "his deputy [deputy of the marshal] or other officer or person" are inserted.

Reference to "gold and silver coin" is omitted as covered by "money".

Changes are made in phraseology.

CROSS REFERENCE

Certain income and benefits not subject to execution, see note to § 15–302.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Licenses

Where §§ 25–106 and 25–107 providing for issuance of license to sell alcoholic beverages also provided for transfer and assignment of such license, the license was a "property right" subject to levy, under execution, to satisfy a judgment of Municipal Court. *Rowe* v. *Colpoys* (1943, 137 F. 2d 249, 78 U.S. App. D.C. 75, 148 A.L.R. 488, certiorari denied 64 S. Ct. 190, 320 U.S. 783, 88 L. Ed. 470).

§ 15–312. Levy on money and evidences of debt.

When the fieri facias is levied on money belonging to the judgment debtor the marshal may not expose the money to sale, but shall account for it as money collected. Bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal may indorse them to pass title to the purchaser. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–211 (Mar. 3, 1901, ch. 854, § 1083, 31 Stat. 1359).

Changes are made in phraseology.

§ 15–313. Levy on equitable interest in chattels pledged.

The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee, and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and the lien thus obtained may be enforced by civil action. In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by civil action. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–212 (Mar. 3, 1901, ch. 854, § 1084, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 541.)

Words "civil action" are substituted for "proceedings in equity" in two places, in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure. Rule 2 thereof (as well as Rule 2 of the civil rules of the Court of General Sessions) provides that in civil cases there shall be only one form of action, to be known as a "civil action".

§ 15–314. Appraisement—Notice of sale.

Where not herein otherwise provided, all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash.

Personal property may be sold after ten days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title.

Leasehold and freehold estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–214 (Mar. 3, 1901, ch. 854, § 1085, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 541).

The provision that estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code, is substituted for the provision that such estates may be sold after 20 days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title. Section 2002 of Title 28, United States Code, which applies to all district courts, including the United States District Court for the District of Columbia, prescribes the manner of notice of the sale of realty under order, judgment, or decree of court. Sections 2001 and 2004 of that title (and Rule 31 of the local rules of the U.S. District Court for the District of Columbia) relate, respectively, to the sale of realty, and the sale of personalty, but only to sales under order or decree of court (judicial sales). They do not relate to sales under execution. Section 2005 thereof provides in part that whenever State law (which, as used therein, includes law of the District of Columbia) requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States (which term, under sections 88, 132, and 451 thereof, includes the U.S. District Court, for the District of Columbia) shall be appraised in like manner. It also provides for the summoning of appraisers by the marshal, for sale of the goods by the marshal without an appraisal, if the appraisers fail to attend and perform their required duties, and for the payment of appraisers' fees according to "State" law.

For additional provisions relating to executions on judgments, see Rules 69, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

Changes are made in phraseology.

§ 15–315. Death, removal, or disqualification of marshal.

When the marshal dies, or is removed from office, or becomes otherwise disqualified from executing a writ of execution received by him, the writ may be executed and returned by his deputy or successor in office. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–215 (Mar. 3, 1901, ch. 854, § 1101, 31 Stat. 1361; June 30, 1902, ch. 1329, 32 Stat. 541).

Reference to the coroner is omitted as obsolete.

For provisions relating to death, removal, or incapacity of marshal after levy on real property but before sale, or after levy thereon and sale thereof, but before execution of a deed, see section 2003 of Title 28, United States Code.

Changes are made in phraseology.

§ 15–316. Subrogation of purchaser after defective sale—No refund.

When, upon the sale of property under execution, the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent has a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor may not be required to refund the purchase money on account of the invalidity of the sale. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–216 (Mar. 3, 1901, ch. 854, § 1102, 31 Stat. 1361).

Minor changes are made in phraseology.

§ 15–317. Remedy of marshal for erroneous sale made in good faith.

When the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of the value, may, on motion and due notice thereof to the defendant, have the satisfaction of the judgment vacated, and execution shall issue thereon for his use as if the levy and sale had not been made. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–217 (Mar. 3, 1901, ch. 854, § 1103, 31 Stat. 1362).

Minor changes are made in phraseology.

§ 15–318. Remedies of purchaser upon refusal to deliver possession.

When real property is sold by virtue of an execution, and the judgment debtor or a person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, the court, on the application of the purchaser, may:

(1) require the person so in possession to show cause why possession should not be delivered according to the demand; and

(2) if good cause is not shown, issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession.

If the party in possession alleges under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, the writ may not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy in the District of Columbia Court of General Sessions provided for in sections 16–1501 to 16–1505. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–313 (Mar. 3, 1901, ch. 854, § 1100, 31 Stat. 1361; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1962, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology and arrangement.

§ 15–319. Execution of final decree after death—Other appropriate proceedings.

When a party to an action dies after final decree, the court may order execution of the decree as if death had not occurred, or the court, after motion and hearing, may order the decree revived against the proper representatives of the deceased party, or make such other order or direct such other proceedings as seems best calculated to advance the purposes of justice. The heir or other proper representative may appear at any time before execution of the decree and be admitted as a party to the action, on such terms as the court prescribes, and such further proceeding may be had as may be appropriate to the merits of the cause. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 12–113 (Mar 3, 1901, ch. 854, § 248, 31 Stat. 1229).

Words "the court, after motion and hearing, may order the decree revived against the proper representatives" are substituted for "the court may order a subpoena scire facias to be issued, or a bill of revivor to be filed against the proper representatives". Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the relief theretofore available by scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules. See, also Rule 30 of the local rules of the United States District Court for the District of Columbia relating to revival of judgment against a judgment debtor (by motion and hearing), and Moore's Federal Practice, 2d ed., vol. 4, § 25.03. The reference to "bill of revivor" in the words quoted above from section 12–113 of the D.C. Code, 1961 ed., is omitted. This term was used in equity practice and has been obsolete since the merger of law and equity practice by the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 15–320. Enforcement of decrees.

(a) For the purpose of executing a decree, or compelling obedience to it, the United States District Court for the District of Columbia or the District of Columbia Court of General Sessions, in addition to

the other procedures provided for by this chapter and chapter 5 of Title 16, may:

(1) issue an attachment against the person of the defendant;

(2) order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree; or

(3) by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case requires.

In case of sequestration, the court may order payment and satisfaction to be made out of the estate and effects so sequestrated, according to the true intent and meaning of the decree.

(b) When a defendant is arrested and brought into court upon any process of contempt issued to compel the performance of a decree, the court may, upon motion, order:

(1) the defendant to stand committed; or

(2) his estates and effects to be sequestrated and payment made, as directed by subsection (a) of this section; or

(3) possession of his estate and effects to be delivered by order and injunction, as directed by subsection (a) of this section—

until the decree or order is fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared.

(c) Where a decree only directs the payment of money, the defendant may not be imprisoned except in those cases especially provided for. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–326 (Mar. 3, 1901, ch. 854, § 113, 31 Stat. 1208).

"United States District Court for the District of Columbia" is substituted for "said court". The latter referred, in the original (Code of 1901), to the "equity court", which, under the provisions of that Code, was the Supreme Court of the District of Columbia (now the District Court) when exercising its equity jurisdiction at the special term provided therein for such purpose. The term "equity court" has been obsolete since the enactment, in 1948, of Title 28, United States Code. See revision note under section 11–502 herein.

The reference, in subsec. (a), to the District of Columbia Court of General Sessions, is new, and merely conforms the section with the present jurisdiction and powers of that court, and does not effect a change in substance. After the merger, in 1942, of the Municipal Court *of* the District of Columbia, and the Police Court, to form the Municipal Court *for* the District of Columbia, at which time the civil jurisdiction of the Municipal Court was enlarged, the Municipal Court had equitable jurisdiction. See the cases of *Klepinger* v. *Rhodes*, C.A. Dist. Col. 1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, cert. denied 64 S. Ct. 1047, 322, U.S. 734, 88 L. Ed. 1568; *Ridgley* v. *U.S.*, D.C. Mun. App. 1945, 45 A. 2d 475. In 1962, the name of the court was changed to District of Columbia Court of General Sessions. See section 11–901 herein.

The phrase "or may issue a fieri facias and attachment by way of execution against lands tenements, chattels, and credits, or other incorporeal property, to satisfy the decree" is omitted as covered by other provisions of this chapter and chapter 5 of Title 16 herein, which relate to "decrees" as well as judgments. However, for the purpose of completeness, the phrase "in addition to the other procedures provided for by this chapter and chapter 5 of Title 16" is inserted near the beginning of subsec. (a).

For additional provisions relating to the enforcement of judgments and decrees for the performance of specific acts, see Rules 54(a) and 70, respectively, of the Federal Rules of Civil Procedure and the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Authority of reviewing court 1
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1. Authority of reviewing court

Reviewing court may not supply a finding required for validity of commitment for contempt for nonpayment of money judgment. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 192 U.S. App. D.C. 259).

2. Basis for commitment

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *Lundregan* v. *Lundregan* (1958, 232 F. 2d 823, 102 U.S. App. D.C. 259).

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Id.*

3. —— Contempt adjudication

In proceeding on motion to adjudicate respondent in contempt for failure to comply with order of court, wherein record showed that respondent did not have possession or control of money received from sale of estate stocks and that conservator had attached his interest in certain other property which, when liquidated, would satisfy money judgment against him in substantial part and probably in full and that he had no other known assets, District of Columbia Code barred imprisonment under contempt order entered against him and contempt adjudication was unwarranted. *Blackwelder* v. *Collins, Collector, etc.* (1958, 252 F. 2d 854, 102 U.S. App. D.C. 290).

4. Contempt

Statute precluding imprisonment for mere failure to pay money had no application to contempt proceeding. *In re E. L. Ferrell and N. A. Perry* (D.C. Mun. App. 1961, 172 A. 2d 555).

Where first order required husband to pay wife for maintenance of children, and second order after husband and wife were divorced replaced earlier order and required husband to pay a greater amount for such maintenance, husband failing to pay the amount provided for in the second order was in contempt, but husband could not be imprisoned inasmuch as the second order was entered after the divorce. *Queen* v. *Queen* (1951, 188 F. 2d. 624, 88 U.S. App. D.C. 157).

5. Decree awarding attorney's fee

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman* v. *Berman* (1953, 202 F. 2d 812, 92 U.S. App. D.C. 77).

6. Decree awarding custody

A divorce decree awarding custody of children to wife and directing payment by husband of a specified sum monthly for their maintenance does not only direct payment of money within this section, and husband who failed to make the required monthly payments could be imprisoned for contempt, notwithstanding that the divorce was granted to husband on his application. *Evans* v. *Evans* (1941, 36 F. Supp. 12).

7. Final orders

An order requiring the payment of maintenance, even pendente lite, is a "final order" and not an "interlocutory order", for purpose of determining court's jurisdiction to imprison for contempt for noncompliance with the order. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

8. Grounds for imprisonment

Where judgments did not require payment of any specifically identified or identifiable money, and would be satisfied by payment of amount in legal tender from any source, judgment debtor could not be imprisoned for failure to pay since District of Columbia Code forbids imprisonment for contempt of a decree which only directs payment of money except in cases where imprisonment is "especially provided for". *Blackwelder* v. *Collins, Collector, etc.* (1958, 252 F. 2d 854, 102 U.S. App. D.C. 290).

9. Imprisonment

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Order directing government employee, whose salary was not subject to attachment or garnishment, to pay over a certain amount of his salary each month to a receiver in satisfaction of a judgment was a violation of the provisions of this section forbidding imprisonment for debt, for necessarily it threatened defendant with punishment as for contempt of court if he failed to pay. *McGrew* v. *McGrew* (1930, 38 F. 2d 541, 59 App. D.C. 230, certiorari denied 50 S. Ct. 349, 281 U.S. 739, 74 L. Ed. 1153).

The provision that no defendant shall be imprisoned, where decree is for fine, is a limitation on the fundamental power of the court. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

Under this section providing that where a decree directs only payment of money no defendant shall be imprisoned except in those cases especially provided for, court has no power to overstep that limitation. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

After final decree was entered dismissing divorce suit but containing no reference to unpaid installments of alimony which had accrued under pendente order, this section forbidding imprisonment for violation of decree ordering only payment of money came into play. *Cole* v. *Cole* (App. D.C. 1947, 161 F. 2d 883).

10. Mandatory injunctions

Where plaintiffs sought injunction requiring defendants to restore to plaintiffs possession of an apartment, mandatory injunction was properly denied on ground that plaintiffs had an adequate remedy at law. *Leonardo* v. *Leonardo* (1944, 145 F. 2d 849, 79 U.S. App. D.C. 258).

A mandatory injunction should be denied when its issuance will cause injury to defendant and no benefit or very little benefit to plaintiff, especially when money damages will afford compensation. *Id.*

11. Parentage proceedings

Part of Juvenile Court Act establishing procedures to determine parentage in order to insure support for unacknowledged illegitimate children did not pre-empt jurisdiction of Domestic Relations Branch of Municipal Court over suit by or on behalf of acknowledge, though illegitimate, child against his natural father. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

Proceeding to determine parentage as primary basis of establishing duty to support illegitimate child is quasi-criminal in some of its aspects and lies exclusively in juvenile court. *Id.*

§ 15–321. Enforcement of interlocutory decrees.

An interlocutory order may be enforced by such process as might be had upon a final judgment or decree to the like effect, and the payment of costs adjudged to a party may be enforced in like manner. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–327 (Mar. 3, 1901, ch. 854, § 114, 31 Stat. 1208).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general 1
Nonpayment of maintenance pendente lite 2

1. In general

This section provided that interlocutory orders might be enforced by the same process that might be had upon a final judgment or decree to the like effect, and payment of costs adjudged to any party might be enforced in like manner. *Karrick* v. *Edes* (1927, 19 F. 2d 693, 57 App. D.C. 219).

2. Nonpayment of maintenance pendente lite

Under § 16–415 authorizing imprisonment for enforcement of permanent maintenance and §§ 16–410, 16–411, for enforcement of alimony during pendency of divorce suit and this section, permitting enforcement of interlocutory orders by same process as final decrees, court had no power to imprison husband for failure to pay awards of maintenance pendente lite and suit money, in wife's suit for maintenance. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

§ 15–322. Enforcement of decrees for delivery of chattels.

In addition to the procedures for enforcement of judgments or decrees otherwise provided for, an order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–328 (Mar. 3, 1901, ch. 854, § 115, 31 Stat. 1208).

Words ", as well as those heretofore used for its enforcement in equity practice", which followed "common law", are omitted as obsolete, or in any event unnecessary, in view of the other provisions of this chapter, the Federal Rules of Civil Procedure, adopted in 1938, which merged law and equity practice, and the civil rules of the District of Columbia Court of General Sessions, which are patterned to some extent upon the Federal Rules of Civil Procedure. See particularly, rules 54(a), 64, and 70 of the Federal Rules of Civil Procedure, and rules 54(a) and 70(b) of the civil rules of the Court of General Sessions. However, to make it clear that the type of decree referred to is enforceable in other ways, words "In addition to the procedures for enforcement of judgments or decrees otherwise provided for," are inserted at the beginning.

§ 15–323. Limitation on seizure of real property.

Real property or rent shall not be seized for a debt, as long as the present goods and chattels of the debtor are sufficient to pay it, and the debtor himself is ready to satisfy the debt. (Dec. 21, 1963, 77 Stat. 528, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–213 (9 Hen. 3, ch. 8, § 1, 1225; Kilty's Rep., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D.C., p. 223, § 4).

This British statute is still being applied in the District of Columbia. See *Encyclopaedia* v. *Jones,* D.C.D.C. 1951, 101 F. Supp. 521.

Changes are made in phraseology.

Chapter 5.—EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY

SUBCHAPTER I.—EXEMPTIONS

Sec.
15–501. Exempt property of householder—Property in transitu—Debt for wages.
15–502. Mortgage or other instrument affecting exempt property.
15–503. Earnings and other income.—Wearing apparel and tools of certain persons.

SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF COURT OF GENERAL SESSIONS

15–521. Notice of claim or exemption—Trial.
15–522. Docketing of claim—Manner of trial.
15–523. Judgment.
15–524. Replevin against officer.

SUBCHAPTER I.—EXEMPTIONS

§ 15–501. Exempt property of householder, property in transitu—Debt for wages.

(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

(1) all wearing apparel provided for all persons within the household, being members of the immediate family of the household, not exceeding $300 per person in value;

(2) all beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding $300 in value;

(3) provisions for three months' support, whether provided or growing;

(4) fuel for three months;

(5) mechanics' tools and implements of the debtor's trade or business amounting to $200 in value, with $200 worth of stock or materials for carrying on the business or trade of the debtor;

(6) the library, office furniture, and implements of a professional man or artist, not exceeding $300 in value;

(7) one horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding $500 in value if used principally by the debtor in his trade or business; and

(8) all family pictures; and all the family library, not exceeding $400 in value.

The exemption provided for by clause (5) of this subsection also applies to merchants.

(b) The exemptions provided for by subsection (a) of this section are valid when the property is in transitu the same as if at rest; but property named and exempted in this section is not exempt from attachment or execution for a debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section, the person who is the principal provider for the family is the head thereof. (Dec. 23, 1963, 77 Stat. 529, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–401 (Mar. 3, 1901, ch. 854, § 1105, 31 Stat. 1362; Dec. 20, 1944, ch. 610, § 1, 58 Stat. 817).

Minor changes are made in phraseology and arrangement.

CROSS REFERENCES

Certain income and benefits not subject to execution, see § 15–302.

Exemption after death, see § 18–406.

Notary's seal and official documents exempt from execution, see § 1–507.

NOTES TO DECISIONS UNDER PRIOR LAW

Actual residence 1
Construction 2
Householder 3
Unlawful seizure 4

1. Actual residence

Under this section, the requirement as to actual residence relates to the time of the issuance of the writ, and if a wage earner then is an actual resident, he is entitled to the protection of the statute. *Fidelity Sav. Co.* v. *Fawcett* (1928, 22 F. 2d 591, 57 App. D.C. 285).

2. Construction

A liberal construction is to be given to this section exempting property from assets that would be set aside to satisfy creditors. *Frank* v. *Hyman, etc.* (1958, 260 F. 2d 721, 104 U.S. App. D.C. 203).

3. Householder

Bankrupt, a widow living alone in an apartment of several rooms furnished with her household furniture, was a "householder" within this section granting to householder residing in District of Columbia exemption of furnishings not exceeding $300 in value and bankrupt was entitled to exemption of her household furnishings, which did not exceed $300 in value, from assets that would be set aside to satisfy her creditors. *Frank* v. *Hyman Trustee, etc.* (1958, 260 F. 2d 721, 104 U.S. App. D.C. 203).

4. Unlawful seizure

In action for damages for unlawful seizure of plaintiff's truck on writ of fieri facias, that court had quashed the levy, deciding that truck was exempt from seizure was not res judicata of existence of malice or want of probable cause, nor was it competent evidence for plaintiff on such issues. *Lee* v. *Dunbar* (D.C. Mun. App. 1944, 37 A. 2d 178).

Where question whether this section comprehended a motor vehicle had not been authoritatively decided, and there was substantial authority for view that motor vehicles were not exempt, "probable cause" existed for judgment creditor to seize a motor dump truck on writ of fieri facias, so as to preclude recovery of damages, notwithstanding return of truck was ordered by court which decided that truck was exempt from seizure and sale under this section. *Id.*

Where only evidence of actual damages was loss of use of truck wrongfully attached during 5-day period, judgment had remained unpaid more than 30 days and truck owner's operator's permit and registration certificate had been suspended so that operation of truck during 5-day period would have constituted a criminal offense, recovery would be limited to nominal damages, if any. *Id.*

§ 15–502. Mortgage or other instrument affecting exempt property.

A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the wife of a debtor who is married and living with his wife. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–402 (Mar. 3, 1901, ch. 854, § 1106, 31 Stat. 1362).

Minor changes are made in phraseology.

§ 15–503. Earnings and other income—Wearing apparel and tools of certain persons.

(a) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed $200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where husband and wife are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the husband and wife is the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed $60 each month for two months preceding the date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding $300 in value, and mechanic's tools not exceeding $200 in value, are also exempt.

(c) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–403 (Mar. 3, 1901, ch. 854, § 1107, 31 Stat. 1363; Dec. 20, 1944, ch. 610, § 2, 58 Stat. 818; Apr. 15, 1952, ch. 206, § 1, 66 Stat. 59; Aug. 4, 1959, Pub. L. 86–130, § 4, 73 Stat. 277).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Discretion of court 1
Householder 2
Rehearing 3
Room and board 4
Unemployment compensation 5

1. Discretion of court

Creditor's motion to rehear a claim of exemption in garnishment suit granted by default was within discretion of the court which could prescribe such terms as were just. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply, Inc., et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

In garnishment proceedings, where garnishee appeared and showed several reasons why no judgment of condemnation or recovery should be entered, including garnishee's failure to understand nature of proceedings, his lack of indebtedness to judgment defendant, and right of judgment defendant to claim exemptions, there was no error in municipal court's use of judicial discretion in refusing to grant judgment of recovery against garnishee. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

2. Householder

Bankrupt, a widow living alone in an apartment of several rooms furnished with her household furniture, was a "householder" within section of District of Columbia Code granting to householder residing in District of Columbia exemption of furnishings not exceeding $300 in value and bankrupt was entitled to exemption of her household furnishings, which did not exceed $300 in value, from assets that would be set aside to satisfy her creditors. *Frank* v. *Hyman Trustee, etc.* (1958, 260 F. 2d 721, 104 U.S. App. 203).

3. Rehearing

Where creditor attached wages of judgment debtor and during pendency of judgment debtor's claim for exemption which was subsequently established by default, creditor through fraud obtained possession of attached wages from employer, a court could properly refuse to entertain creditor's motion for rehearing on exemption claim until creditor had restored money to employer. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply, Inc. et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

4. Room and board

Value of room and meals furnished by employer to domestic servants were properly excluded from salary or earnings under wage exemption statute. *Hollywood Credit Clothing Co., Inc.* v. *Jones* (D.C. Mun. App. 1955, 117 A. 2d 226).

5. Unemployment compensation

Court properly refused to aggregate unemployment compensation benefits of husband with wife's wages in determining wife's exemption from attachment, in absence of showing that benefits were mingled with wages or that debt was for necessaries furnished during unemployment. *Washington Telephone Federal Credit Union* v. *Breeden* (D.C. Mun. App. 1959, 151 A. 2d 774).

SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF COURT OF GENERAL SESSIONS

§ 15–521. Notice of claim or exemption—Trial.

When personal property taken on execution or other process issued by the District of Columbia Court of General Sessions is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and the claimant gives written notice to the marshal of his claim, or the defendant gives notice, in writing, that the property is exempt, the marshal shall notify the plantiff of the claim and return the notice to the court, and a trial of the right of property, or the question of exemption, shall be had before the court. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–744, 11–751a (Mar. 3, 1901, ch. 854, § 33, 31 Stat. 1194; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Conclusiveness of findings 2
In general 1
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Priorities of liens 7
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1. In general

This section "provides summary statutory method, unknown to the common law, of determining the right of property and restoring possession thereof to the rightful owner. * * * It makes no provision for the recovery of damages." *Tribby* v. *O'Neal* (39 App. D.C. 467).

2. Conclusiveness of findings

Where evidence was such that in statutory proceeding for trial of right of property either one of two different conclusions might reasonably be drawn therefrom, trial court's judgment could not be disturbed by Municipal Court of Appeals. *Perlman* v. *Chal-Bro., Inc.* (D.C. Mun. App. 1945, 43 A. 2d 755).

3. Judgment

Judgment for third-party claimant on trial of right of property in good seized was not res judicata against United States marshal and his surety, as they were not parties to the action and may defend on ground of fraudulent transfer prior to levy made by the marshal thereon. *Snyder* v. *Charles Levine, Inc.* (1936, 80 F. 2d 382, 65 App. D.C. 81).

4. Jurisdiction to enjoin

The District Court of the District of Columbia has jurisdiction to enjoin sale of chattels under execution writ from municipal court of the District as the District Court, similar to nisi prius courts in the States, is the first court of general equity powers. *Palais Royal* v. *Calhoun* (1937, 92 F. 2d 515, 67 App. D.C. 364).

5. Notice to marshal

Notice to marshal of company's claim to chattels was given as provided by this section. *Stern Co. of Washington* v. *Rosenberg* (1937, 89 F. 2d 843, 67 App. D.C. 99).

6. Possession under lien

Person in possession of property under lien may claim benefit of section and does not waive his right to maintain action thereunder by becoming purchaser at marshal's sale. *Brown* v. *Petersen* (25 App. D.C. 359). See, also, *Bond* v. *Carter Hdw. Co.* (15 App. D.C. 72).

7. Priorities of liens

Where four dump trucks were sold by motor company to contractor for use in hauling topsoil to be purchased in Virginia, and on back of conditional sales contract was a purported assignment for value by motor company to a credit corporation, but conditional sales agreement was never actually assigned to credit corporation, and contractor registered trucks with Division of Motor Vehicles in Virginia, and owner of realty, who had contracted to sell topsoil, had no knowledge that motor company reserved liens on trucks, but he learned of recordation of conditional sales agreement in favor of credit corporation, and he then wrote to credit corporation and inquired as to status of recorded liens, and was informed by credit corporation that it had not financed conditional sale, and when owner of realty was not paid for topsoil he brought suit against contractor, and three of the trucks were seized under writ of attachment, lien of owner of realty was superior to that of motor company under Virginia law. *Davis* v. *Sheriff* (D.C. Mun. App. 1951, 81 A. 2d 344).

8. Subsequent action for damages

A proceeding under this section is no bar to subsequent action for damages. *Tribby* v. *O'Neal* (39 App. D.C. 467).

§ 15–522. Docketing of claim—Manner of trial.

The case made by the claim referred to in section 15–521 shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–745 (Mar. 3, 1901, ch. 854, § 34, 31 Stat. 1194; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

§ 15–523. Judgment.

If the property referred to in section 15–521 appears to belong to the claimant or to be exempt from the process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall be released. If the property does not appear to belong to the claimant or to be exempt, judgment shall be entered against the claimant or the defendant as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–746 (Mar. 3, 1901, ch. 854, § 35, 31 Stat. 1195; June 30, 1902, ch. 1329, 32 Stat. 521; Apr. 19, 1920, ch. 153, 41 Stat. 555).

Minor changes are made in phraseology.

§ 15–524. Replevin against officer.

This subchapter does not prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as described in this subchapter. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–747 (Mar. 3, 1901, ch. 854, § 37, 31 Stat. 1195).

Minor changes are made in phraseology.

Cross References

Certain income and benefits not subject to execution, see notes to § 15–302.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Legislative intention

This section is mainly intended, by summary means, to indemnify and save harmless the officer charged with the execution of the writ or process, and to protect plaintiff who may direct the levy upon or seizure of the property, and also to uphold and maintain power and jurisdiction of the justice, in making his process effective, but at same time to avoid injury to third persons. *Snyder* v. *Charles Levine, Inc.* (1936, 80 F. 2d 382, 65 App. D.C. 81).

Chapter 7.—FEES AND COSTS

Sec.
15–701. Compensation taxed as costs—Attorneys' compensation from clients.
15–702. Docket fees of attorneys and proctors.
15–703. Deposit for costs—Security for costs by nonresidents.
15–704. Advance payment of costs and fees.
15–705. Exemption of District of Columbia and United States from fees, costs, and bonds.
15–706. Clerk's fees in United States District Court for the District of Columbia.
15–707. Probate Court fees.
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15–709. Fees and costs in Court of General Sessions in civil and criminal cases.
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Sec.
15–711. Deposit or security for costs in Court of General Sessions.
15–712. Waiver of prepayment of costs in Court of General Sessions.
15–713. Deposits for jury trials in Court of General Sessions.
15–714. Witness fees for attendance in Court of General Sessions.
15–715. Witness fees in prosecutions for cruelty to children or animals.
15–716. Advances to Court of General Sessions clerk for witness fees.

§ 15–701. Compensation taxed as costs—Attorneys' compensation from clients.

(a) Except as otherwise provided by law, only the compensation specified in this chapter may be taxed and allowed to attorneys, proctors, United States attorney, clerk of the United States District Court for the District of Columbia, marshal, witnesses, and jurors.

(b) This chapter does not prohibit attorneys and proctors from charging or receiving from their clients other than the government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1501 (Mar. 3, 1901, ch. 854, § 1108, 31 Stat. 1363; June 25, 1948, ch. 646, §§ 16, 32(b), 62 Stat. 989, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Reference to "solicitors" is omitted as covered by "attorneys", and "district attorney" is changed to "United States attorney" pursuant to Title 28 U.S.C.

The taxation of costs in the United States District Court is also governed by 28 U.S.C. § 1920.

Changes are made in phraseology.

CROSS REFERENCES

Notary fee, see §§ 1–514, 1–515.

NOTES TO DECISIONS UNDER PRIOR LAW

Allowance discretionary 1
Attorney's fees 2
Breach of contract 3
Collection of fees 4
Costs in probate proceedings 5
Divorce 6
Equity actions 7
Evidence 8
Fees part of costs 9
Jurisdiction 10
Partition suit 11
Pleading 12
Presumption 13
Release 14
Rent actions 15
Repeal 16
Representing conflicting interests 17
Statutory authorization required 18
Statute of the United States 19
Vacating judgment 20

1. Allowance discretionary

Costs section of District of Columbia Code is not a "statute of United States" within federal rule providing that except when express provision is made, either in a statute of the United States or in federal rules, costs shall be allowed to prevailing party unless court otherwise directs, and court has discretion in District of Columbia in awarding of costs. *Riss & Company, Inc.* v. *Association of American Railroads et al.* (1962, 217 F. Supp. 376).

2. Attorney's fees

In action on notes payable in District of Columbia, successful plaintiff was not entitled to attorney fees where District of Columbia Code did not provide for attorney fees in such a case and parties had not agreed that maker should bear such costs. *Rosden* v. *Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

Where bailee of china for hire misplaced it through carelessness, deprived bailor of its use for over two years, unjustifiably refused to deliver it to bailor for four or five months more after discovering its whereabouts in bailee's warehouse, and finally delivered china to bailee only when about to be ordered to do so by court after trial of bailee's action to recover damages from bailee for wrongful detention thereof, bailor was entitled to recover for his reasonable expenses and time lost on trip, made by him at time of trial because of bailee's refusal to deliver china to bailor unconditionally, and such part of his counsel fees as could be allocated to counsel's efforts to regain possession of china before trial, if such trip and efforts were reasonably necessary to regain property. *Boiseau* v. *Morrissette* (D.C. Mun. App. 1951, 78 A. 2d 777).

3. Breach of contract

An attorney was not entitled to recover on a contract to render professional services to clients for balance of their lives without receiving any compensation therefor until the death of the survivor, where attorney breached the contract by accepting payments for his services during the lifetime of the client. *Hoover* v. *Lacey* (1948, 80 F. Supp. 691).

4. Collection of fees

Where attorney wrote client threatening to sue for fee, it was not wrongful and hence not duress. What constitutes duress is a matter of law though whether it existed is a question of fact. *Rizzi* v. *Fanelli* (D.C. Mun. App. 1949, 63 A. 2d 872).

5. Costs in probate proceedings

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *Adlung, Executors, etc.* v. *Gotthardt et al.* (1958, 257 F. 2d 199, 103 U.S. App. D.C. 195).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

6. Divorce

As statute does not expressly make provision therefor, a husband can not collect attorney fees from wife when he is plaintiff in a divorce action against her. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

7. Equity actions

In equitable actions, costs may be charged to either party in the discretion of the court, but the District Code specifies the compensation which may be taxed as costs and provides that no other costs may be so taxed unless provided by law. Since no fraud was found, attorneys' fees are not allowable as damages. *Cahill* v. *Bryan* (1950, 184 F. 2d 277, 87 U.S. App. D.C. 271).

8. Evidence

Member of the Bar of the District of Columbia was qualified to testify as an expert with respect to legal services rendered in neighboring jurisdiction of Virginia though he was not a member of the Virginia Bar, and had only a limited experience there, and had only slight knowledge of the fees customarily charged there, such facts going only to the weight of his testimony. *Fraser* v. *Crounse* (D.C. Mun. App. 1948, 56 A. 2d 54).

9. Fees part of costs

Fees to special auditor may be taxed as part of the costs of the cause. *Davis* v. *Fidelity & Deposit Co. of Maryland* (1934, 73 F. 2d 118, 63 App. D.C. 395).

10. Jurisdiction

The bankruptcy court had exclusive jurisdiction to determine title to decedent's liquor store which administratrix had allowed bankrupt to control and operate, and such determination would not interfere with jurisdiction of probate court. *N. M. White, personally etc.* v. *M. F. Schwartz, Trustee etc.* (1962, 302 F. 2d 916, 112 U.S. App. D.C. 331).

11. Partition suit

Attorney's fees in partition suit can not be taxed as costs. *Fletcher* v. *Coomes* (1923, 285 F. 893, 52 App D.C. 159, certiorari denied 43 S. Ct. 363, 261 U.S. 619, 67 L. Ed. 830).

12. Pleading

An attorney seeking cancellation of release of claims against clients based on a payment of $1,200 failed to plead fraud with sufficient particularity as required by Federal Rule 9b, 28 U.S.C., based on the statement that at time he executed the release he was in financial straits and that such was known to the client. *Hoover* v. *Lacey* (1948, 80 F. Supp. 691).

13. Presumption

There is a presumption of over-reaching or duress in a contract regarding compensation between attorney and client, once the fiduciary relationship has been established, *Rizzi* v. *Fanelli* (D.C. Mun. App. 1949, 63 A. 2d 872).

14. Release

A release executed by attorney to clients under contract for the performance of professional services for clients during balance of their lives in the consideration of $1,200 would not be set aside on the ground of gross inadequacy of consideration, where if any disparity existed between the parties, it was in favor of the attorney, and he was familiar with the size of the estate of the clients. *Hoover* v. *Lacey* (1948, 80 F. Supp. 691).

15. Rent actions

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. *Id.*

16. Repeal

Section of District of Columbia Code providing for allowance of costs to defendant in an action in which verdict is against plaintiff has been repealed either by usage or implication. *Riss & Company, Inc.* v. *Association of American R.R. et al.* (1962, 217 F. Supp. 376).

17. Representing conflicting interests

Good faith and honesty of motive and intention will not justify a lawyer in representing conflicting interests, and in that connection knowledge on part of attorney is material only on question of his good faith. *Fraser* v. *Crounse* (D.C. Mun. App. 1948, 56 A. 2d 54).

18. Statutory authorization required

In absence of express statutory authority, attorney's fees are not taxable as "costs". *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

19. Statute of the United States

Section of the District of Columbia Code providing for an award of costs to the prevailing party was not a "statute of the United States" within Rule of Civil Procedure conferring discretion on a trial judge in allowing costs except when an express provision therefore is made in a statute of the United States, and therefore judges of the federal District Court of the District of Columbia have discretion as to whether to allow costs to the prevailing party. *Association of Western Railways et al.* v. *Riss & Company, Inc.* (1963, 320 F. 2d 785, 116 U.S. App. D.C. 63).

Attorneys' fees may not be taxed to either party unless provided for either by law or by agreement between parties *Moses-Ecco Company, Inc.* v. *Roscoe-Ajax Corporation; Roscoe-Ajax Corporation* v. *C. Detwiler* (1963, 320 F. 2d 685, 115 U.S. App. D.C. 366).

20. Vacating judgment

Counsel fees may be awarded as a condition of the vacating of the judgment on payment of the garnishee. The rule that, in the absence of statutory authority, attorneys' fees are not taxable as costs has no application since the payment for counsel fees is not imposed as costs but as a condition to obtaining relief to which the party is not entitled as a matter of right. *Bridgett* v. *Perpetual Building Association* (D.C. Mun. App. 1950, 75 A. 2d 780).

§ 15–702. Docket fees of attorneys and proctors.

(a) Attorney's and proctor's docket fees may be taxed in the amounts fixed by section 1923 of Title 28, United States Code.

(b) An attorney for the District of Columbia may not retain attorney fees taxed as costs in litigation in which the District of Columbia is a party. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1502, 11–1516 (Mar. 3, 1901, ch. 854, § 1109, 31 Stat. 1363; Sept. 1, 1916, ch. 433, 39 Stat. 678; May 24, 1949, ch. 139, § 140, 63 Stat. 109).

Word "solicitor's" is omitted as covered by "attorney's".

Docket fees of United States attorneys are covered by 28 U.S.C. § 1923.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Partition suit

As taxation and allowance for attorney's fees must be limited to the matters enumerated in the Code, there could be no allowance made when it is in a partition suit. *Fletcher* v. *Coomes* (1923, 285, F. 893, 52 App. D.C. 159).

§ 15–703. Deposit for costs—Security for costs by non-residents.

(a) At the commencement of every suit in the United States District Court for the District of Columbia the plaintiff shall deposit at least ten dollars with the clerk, to be appropriated toward the costs of the suit. The court may prescribe rules as to any further costs to be paid by either the plaintiff or defendant during the progress of the case, and as to the collection thereof. Upon the termination of the case any surplus of costs shall be refunded by the clerk.

(b) The defendant in a suit instituted by a non-resident of the District of Columbia, or by one who becomes a non-resident after the suit is commenced, upon notice served on the plaintiff or his attorney after service of process on the defendant, may require the plaintiff to give security for costs and charges that may be adjudged against him on the final disposition of the cause. This right of the defendant does not entitle him to delay in pleading, and his pleading before the giving of the security is not a waiver of his right to require security for costs. In case of noncompliance with these requirements, within a time fixed by the court, judgment of non-suit or dismissal shall be entered. The security required may be by an undertaking, with security, to be approved by the court, or by a deposit of money in an amount fixed by the court.

A nonresident, at the commencement of his suit, may deposit with the clerk such sum as the court deems sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1506 (Mar 3, 1901, ch. 854, § 175, 31 Stat. 1219; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

CROSS REFERENCES

Costs in Court of General Sessions, see §§ 15–709 to 15–712.

Fees and costs in small claims court, see §§ 16–3903 and 16–3909.

NOTES TO DECISIONS UNDER PRIOR LAW

Nonresident plaintiff 1
Security for costs 2

1. Nonresident plaintiff

Where jurisdiction did not depend upon diversity of citizenship, defendant was entitled to security for costs from nonresident plaintiff in the form of an undertaking in the amount of $100 with surety approved by court, or a cash deposit of $50. *Moyers* v. *Leoffler* (1948, 80 F. Supp. 221).

2. Security for costs

Where more than four months had elapsed between filing of defendants' motion for security for costs and final denial of plaintiff's motion for reconsideration of order dismissing the action during which no bonds for security were tendered by plaintiff, dismissal of the action was not an abuse of discretion. *Carpenter* v. *Carpenter* (1946, 156 F. 2d 857, 81 U.S. App. D.C. 214).

§ 15–704. Advance payment of costs and fees.

(a) Costs and fees for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills and chargeable to others than the United States or the District of Columbia are payable in advance and shall be collected pursuant to such rules and regulations, not incompatible with law, as are prescribed by the court.

(b) Section 15–706 does not prohibit the court from directing, by rule or standing order, the collection, at the time the services are rendered, of the fees enumerated in that section from either party, but all such fees shall be taxed as costs in the respective cases. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on the D.C. Code, 1961 ed., §§ 11–1507, 11–1509 (Mar. 3, 1901, ch. 854, §§ 177, 1110, 31 Stat. 1219, 1363; June 30, 1902, ch. 1329, 32 Stat. 527; June 9. 1910, ch. 277, 36 Stat. 464; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 6, 1928, ch. 325, 45 Stat. 410; Mar. 14, 1952, ch. 104, § 1, 66 Stat. 24; Oct. 4, 1961, Pub. L. 87–349, § 1, 75 Stat. 769).

Section consolidates parts of section 11–1507 and 11–1509 of D.C. Code, 1961 ed. For remainder of those sections, see tables.

The exception as to fees chargeable to the District of Columbia is inserted pursuant to the section of this chapter exempting the District from the payment of court costs.

The provision of 28 U.S.C. § 1914(c) that each district court by rule or standing order may require advance payment of fees does not apply to the District of Columbia under subsection (d) of that section.

Changes are made in phraseology.

CROSS REFERENCE

Liability for costs in suits against Board of Education, see § 31–101.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of clerk 1
Former rule 2
Printing record 3
Reason for the rule 4

1. Duty of clerk

Fees and emoluments of the office belong to the government, subject only to the payment of the annual-salary of the clerk, necessary clerk hire, and incidental expenses, and the clerk is the collecting agent of the government. *Bean* v. *Patterson* (1884, 4 S. Ct. 23, 110 U.S. 401, 28 L. Ed. 190).

Clerk should account to United States for fees received in civil actions and from the territory on account of territorial business, but not for services in naturalization proceedings. *United States* v. *McMillan* (1897, 17 S. Ct. 395, 165 U.S. 504, 41 L. Ed. 805).

2. Former rule

Liability of District of Columbia Commissioners for costs prior to act of June 9, 1910. *Brown* v. *Macfarland* (22 App. D.C. 412).

3. Printing record

Practice under this section has been for parties to deposit the sum of $25 in lieu of a fee bond, and the rule provides for the subsequent advance of the cost of printing the record and the fee for its preparation. *Green* v. *Elbert* (1890, 11 S. Ct. 188, 137 U.S. 615, 34 L. Ed. 792).

4. Reason for the rule

Clerk is required to pay into the treasury the fees and emoluments of his office over and above his own compensation as fixed by law, and his necessary clerk hire and incidental expenses. It is proper, therefore, that for his protection his fees should be paid in advance, if demanded. *Steever* v. *Rickman* (1183, 3 S. Ct. 67, 343, 109 U.S. 74, 27 L. Ed. 861).

§ 15–705. Exemption of District of Columbia and United States from fees, costs, and bonds.

(a) The District of Columbia or any officer thereof acting therefor may not be required to pay court costs or fees in any court in and for the District of Columbia.

(b) The District of Columbia may not be required to pay fees to the clerk of the United States Court of Appeals for the District of Columbia, or to the marshal of the District, and is entitled to the services of the marshal in the service of all civil process.

(c) The United States and the District of Columbia may not be required to pay fees and costs for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills.

(d) Neither the United States nor the District of Columbia, nor any officer of either acting in his official capacity, may be required to give bond or enter into undertaking to perfect an appeal or to obtain an injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking is required by law or rule of court. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1507, 11–1519, (Mar. 3, 1901, ch. 854, § 177, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527; June 9, 1910, ch. 277, 36 Stat. 464; July 15, 1939, ch. 281, 53 Stat. 1009; June 12, 1940, ch. 333, § 1, 54 Stat. 307; June 28, 1944, ch. 300, § 16, 58 Stat. 533; Oct. 4, 1961, Pub. L. 87–349, § 1, 75 Stat. 769).

Section consolidates part of section 11–1507 of D.C. Code, 1961 ed., with section 11–1519 of the Code. For remainder of section 11–1507, see tables.

Subsection (a) is from section 11–1519 of D.C. Code, 1961 ed., which first appeared in an appropriation act in 1939 and was made permanent in 1944.

Subsections (b)—(d) are from section 11–1507 of D.C. Code, 1961 ed. A provision of that section that the United States shall not be required to pay fees and costs for services rendered by the clerk of the District Court is omitted as superseded by 28 U.S.C. § 2412.

A provision similar to subsection (d) of this section, exempting the United States from giving security for damages or costs, is found in 28 U.S.C. § 2048. See also Rules 62(e) of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 15–706. Clerk's fees in United States District Court for the District of Columbia.

(a) For filing the following-named cases and for all services to be performed therein, except as otherwise provided by law, the clerk of the United States District Court for the District of Columbia shall charge and collect the following fees:

(1) civil actions, $10;
(2) lunacy cases, $10;
(3) deportation cases, $10;
(4) requisition cases, $10;
(5) habeas corpus cases, $10;
(6) plea of title cases, $10;
(7) District court cases, $15;
(8) condemnation cases, $15;
(9) libel cases, $15;
(10) feeble-minded cases, $7.50;
(11) change of name cases, $5;
(12) intervening petitions in any case, $5;
(13) cases substituting trustees, $4;
(14) docketing judgments of the District of Columbia Court of General Sessions, as provided in section 15–132; and
(15) limited partnership cases, $3.

(b) Upon the perfecting of an appeal to the United States Court of Appeals for the District of Columbia Circuit, the clerk shall charge and collect from the party or parties prosecuting the appeal an additional fee of $5 in the action or proceeding.

(c) For each additional trial or final hearing, upon a reversal by the United States Court of Appeals for the District of Columbia Circuit, or following a disagreement by a jury or the granting of a new trial or rehearing by the court, the clerk shall charge and collect from the party or parties securing the reversal, new trial, or rehearing, the further sum of $5.

(d) In a case where attachments, executions, or rules are issued, the clerk shall charge and collect the following fees in addition to the fees otherwise provided:

(1) for each writ of attachment, $1, and each copy, $1;
(2) for each writ of execution, $1.50;
(3) for each rule 50 cents, and each copy certified, 50 cents;
(4) for each writ of ne exeat, $1;
(5) for each bench warrant, $1;
(6) for each warrant of arrest, $1.

(e) In addition to the fees for services rendered in cases hereinbefore enumerated the clerk shall charge and collect, for miscellaneous services performed by him and his assistants, except when on behalf of the United States, the following fees:

(1) for issuing a writ or subpoena for a witness not in a case instituted or pending in the court from which it is issued, 50 cents for each writ and copy or subpoena and copy;

(2) for filing and indexing any paper not in a case or proceeding, 25 cents;

(3) for administering an oath or affirmation, not in a case or proceeding pending in the court where the oath is administered, 50 cents;

(4) for an acknowledgment, certificate, affidavit, or countersignature, with seal, 50 cents;

(5) for taking and certifying depositions to file, 20 cents for each folio of one hundred words, and if taken stenographically, 15 cents per folio additional for the stenographer;

(6) for copy of a record, entry, or other paper and the comparison thereof, 15 cents for each folio of one hundred words;

(7) for searching the records of the court for judgments, decrees, or other instruments, or marriage records, 50 cents for each year covered by the search and for certifying the result, 50 cents;

(8) for making and comparing a transcript of record on appeal, 15 cents for each folio of one hundred words;

(9) for comparing a transcript, copy of record, or other paper not made by the clerk with the original thereof, 5 cents for each folio of one hundred words;

(10) for administering oath of admission of attorneys to practice, $2 each; for certificate of admission to be furnished upon request, $2 additional;

(11) for each marriage license, $2;

(12) for each certified copy of marriage license and return, $1;

(13) for each certified copy of application for marriage license, $1;

(14) for registering clergymen's authorizations to perform marriages and issuing certificate, $1;

(15) for each certificate of official character, including the seal, 50 cents;

(16) for filing and recording each notice of mechanic's lien, $1;

(17) for entering release of mechanic's lien, 50 cents for each order of lienor; 75 cents for each undertaking of lienee;

(18) for recording physicians', optometrists', and midwives' licenses, 50 cents each;

(19) for the clerks' attendance on the court while actually in session, $5 per day;

(20) for all services rendered to the United States in cases in which the United States is a party of record, $5.

(Dec. 23, 1963, 77 Stat. 532, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1509 (Mar. 3, 1901, ch. 854, § 1110, 31 Stat. 1363; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 6, 1928, ch. 325, 45 Stat. 410; Mar. 14, 1952, ch. 104, § 1, 66 Stat. 24).

In subsection (a) "civil actions, $10" is substituted for "Actions at law, $10; suits in equity, $10" because of Rule 2 of the Federal Rules of Civil Procedure providing for one form of action known as a "civil action".

The phrase "adoption cases, $5" is omitted because these cases are now brought in the Domestic Relations Branch of the Court of General Sessions.

In lieu of the fee of $2.50 for docketing judgments of the Court of General Sessions a reference is inserted to section 15–132 herein which fixes this fee at 50 cents.

Subsection (b) of this section is similar to 28 U.S.C. § 1917, and may be superseded by that section, which also fixes the fee at $5.

In subsection (d), "scire facias proceedings" and "for each writ of scire facias, $1, and each copy $1" are omitted because Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias and provided that relief theretofore available by that writ may be obtained by appropriate action or motion.

Provisions of section 11–1509 of D.C. Code, 1961 ed., that the clerk of the United States District Court is not required to account for fees not collected by him in criminal cases, and that surplus fees collected by the clerk shall be deposited in the treasury to the credit of the District of Columbia and the United States in the

proportions required by law are omitted as covered by 28 U.S.C. § 751, which governs payment in the Treasury, and by section 11–330 of D.C. Code, 1961 ed., which is being transferred to Title 47 thereof, and which governs the crediting of fees to the District of Columbia and the United States.

For provisions of section 11–1509 on advance payment of fees, see tables.

Changes are made in phraseology.

Cross Reference

Payment of fees by District of Columbia or officers, see, § 15–705.

NOTES TO DECISIONS UNDER PRIOR LAW

Necessity for clerk's certificate 1
Taxing costs 2

1. Necessity for clerk's certificate

In order that the printed transcript should become the record upon appeal, it was necessary that it should be made so by the certificate of the clerk as to its correctness in form and substance in accordance with his examination and comparison of the printed transcript with that which remained in the lower court. *Sarfert Co.* v. *Chipman* (D.C. Pa. 1913, 205 F. 937).

2. Taxing costs

Questions of costs ordinarily do not properly arise before the taxation, and are not determined by a court in advance, without allowing parties an opportunity to be heard. *Ferguson* v. *Dent* (C.C. Tenn. 1891, 46 F. 88).

§ 15–707. Probate Court fees.

(a) The Register of Wills, clerk of the Probate Court, may demand and receive in advance, for services performed by him, the following fees:

(1) for filing petition or caveat, 50 cents;

(2) for filing other papers, each 5 cents;

(3) for making docket and indexes and taxing costs in each case, $2.50;

(4) for additional docket entries, each 25 cents;

(5) for issuing subpoena to witness and copies, each, 25 cents;

(6) for issuing subpoena duces tecum, 50 cents;

(7) for issuing summons, citation, commission, rule, warrant, notice of trial, process, execution, attachement, or writ, each $1;

(8) for issuing notices to creditors, distributees, and legatees, each 50 cents;

(9) for copies of summons, citation, rule, warrant, or other process, order of publication, notice to creditors, legatees, and distributees, attested under seal and delivered for service or publication, each 50 cents;

(10) for taking and recording every bond, $1.50;

(11) for a probate of will, inventory, or account, $1;

(12) for issuing letters testamentary or of administration, collection, or guardianship, $1;

(13) for issuing certificate of appointment of executor, administrator, collector, or guardian, $1;

(14) for entering panel of jury and swearing them, 50 cents;

(15) for administering an oath or affirmation, 15 cents;

(16) for passing a claim against an estate and entering in docket of claims, 30 cents;

(17) for drawing depositions of witnesses, per folio, 15 cents;

(18) for every search of the files or records outside of a regular proceeding, where no other service is performed for which a fee is allowed, $1;

(19) for examining or stating an account of executor, administrator, collector, guardian, receiver, or trustee, not exceeding one hundred items, $5;

(20) for each additional item, 2 cents;

(21) for stating the distribution of an estate, for each distributee, $1;

(22) for a copy of an account, not exceeding one hundred items, $1.50;

(23) for each additional item, 2 cents;

(24) for recording all papers, per folio, 15 cents;

(25) for copies of all papers not otherwise specified, per folio, 12 cents;

(26) for every certificate under seal, not otherwise specified, 50 cents.

(b) Where the estate does not exceed two hundred dollars in value the Register of Wills shall receive no fees, and where the estate does not exceed five hundred dollars in value the fees may not exceed ten dollars.

(c) The court may allow to the Register reasonable fees for any service he may render not specified by section 15–706. (Dec. 23, 1963, 77 Stat. 534, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1503 (Mar. 3, 1901, ch. 854, § 1111, 31 Stat. 1364; June 30, 1902, ch. 1329, 32 Stat. 541).

Changes are made in arrangement and phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Generally

Commission of Collector of assets of estate, who was appointed on request of unsuccesful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *Adlung, Executors, etc.* v. *Gotthardt et al.* (1958, 257 F. 2d 199, 103 U.S. App. D.C. 195).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

§ 15–708. Deposit for probate court fees.

For proceedings in the probate court deposits and fees shall be paid to the Register of Wills.

Upon the presentation for filing of a petition or a caveat to a will, he may require a deposit for his fees to be charged for the proceedings under the petition or caveat. Upon the deposit becoming exhausted in the liquidation of his fees so charged, he may require a further deposit from the original petitioner or caveator. The deposits may not be required in excess of fifteen dollars at any one time. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1505 (Mar. 3, 1901, ch. 854, § 175, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527).

Changes are made in phraseology.

§ 15–709. Fees and costs in Court of General Sessions in civil and criminal cases.

(a) The District of Columbia Court of General Sessions may prescribe fees and costs, including the fee to be paid for a jury trial. Section 15–702(a), relating to docket fees of attorneys and proctors, does not apply to the Court of General Sessions.

(b) Fees for service by the United States marshal of process issued by the Court of General Sessions shall be:

(1) in civil actions, as prescribed by rule of the United States District Court for the District of Columbia; and

(2) in criminal actions, the same as fees prescribed for like service in the District Court.

(Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748, 11–748e, 11–751a, 11–755, 11–756 note (R.S.D.C., § 1068; Mar. 3, 1901, ch. 854, § 41, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 55 Stat. 623; Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates part of section 11–748 of D.C. Code, 1961 ed., section 11–748e thereof, and act Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312 (D.C. Code 1961 ed., § 11–756 note).

Subsection (a) is from act Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312, cited above, which related to the Municipal Court prior to its merger with the Police Court in 1942 to form the second Municipal Court. Section 11–755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, in connection with the 1942 merger, subsec. (a) provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed and the judges thereof should have the same jurisdiction and powers as those previously vested in the two former courts. The remainder of above-cited section 11 of the 1921 act, authorizing rules of practice, pleading, and procedure, is omitted as superseded by that part of section 11–756 of D.C. Code, 1961 ed., which is carried into section 13–101 herein.

Subsection (b) of this section is from section 11–748e of D.C. Code, 1961 ed., which, until the above-mentioned 1942 merger, related to the Police Court, and section 11–748 thereof, which related to justices of the peace, as enacted in 1901, and was changed to refer to the first Municipal Court in 1909.

In these consolidated and revised provisions, the name of the court is changed to the District of Columbia Court of General Sessions, to conform with section 11–751a of D.C. Code, 1961 ed., enacted by section 1 of the act of Oct. 23, 1962, cited above. Section 11–751a, which is also cited as one of the sources of this section, so changed the name of the court.

The provisions of section 11–748 of D.C. Code, 1961 ed., relating to supersedeas or stay of judgment of the Municipal Court is omitted as covered by Rules 62 and 73 of the Civil Rules of the court (now, Court of General Sessions). For remainder of section 11–748, see tables.

Changes are made in phraseology.

§ 15–710. Fees and costs in Domestic Relations Branch of Court of General Sessions.

The judges of the Domestic Relations Branch of the District of Columbia Court of General Sessions, with the approval of the chief judge of the court, shall prescribe, by rules, the fees, charges, and costs in actions and proceedings in the Domestic Relations Branch. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–766 (Apr. 11, 1956, ch. 204, § 110, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is from part of section 11–766 of D.C. Code, 1961 ed. For remainder of the section, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

§ 15–711. Deposit or security for costs in Court of General Sessions.

Nonresidents of the District of Columbia may commence suits in the District of Columbia Court of General Sessions without first giving security for costs, but upon motion may be required to give security pursuant to section 15–703. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–719, 11–751a, 11–755 (Mar. 3, 1921, ch. 125, § 7, 41 Stat. 1131; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 514; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–719 of D.C. Code, 1961 ed., which related to the Municipal Court prior to its merger, by the act of Apr. 1, 1942, with the Police Court to form the second Municipal Court. Section 11–755 is also cited as one of the sources of this section because, in connection with the 1942 merger, subsec. (a) thereof provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed and the judges thereof should have the same powers and jurisdiction that were vested in the two former courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the District of Columbia Court of General Sessions and the judges thereof should have the same powers and jurisdiction that were vested in the Municipal Court for the District of Columbia and the judges thereof. For remainder of section 11–755, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court referred to above) to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS

1. Suit by nonresident

Generally, there is no restriction on right of nonresident to file suit in the Municipal Court for the District of Columbia. *Rice* v. *Salnier* (D.C. Mun. App. 1952, 86 A. 2d 175).

§ 15–712. Waiver of prepayment of costs in Court of General Sessions.

When satisfactory evidence is presented to the District of Columbia Court of General Sessions or one of the judges thereof that the plaintiff in a suit is indigent and unable to make deposit of costs, the court or judge may permit the prosecution of the suit without the prepayment or deposit of costs. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–720, 11–751a, 11–755 (Mar. 3, 1921, ch. 125, § 8, 41 Stat. 1311; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–720 of D.C. Code, 1961 ed., which related to the Municipal Court prior to its merger with the Police Court in 1942 to form the second Municipal Court. Sections 11–751a and 11–755 are also

cited as sources of this section for the same reasons given in revision note to section 15–711.

The provisions, as herein revised, relate to the District of Columbia Court of General Sessions.

Provisions or waiver of prepayment of costs in the Small Claims and Conciliation Branch of the Court of General Sessions are found in section 16–3903 herein. Proceedings in forma pauperis in the District Court are covered by 28 U.S.C. § 1915.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Affidavit required 1
Citizens 2
Clerk to pay costs 3
Courts included 4
Jurisdiction of court 5
Proceedings in admiralty 6
Transcripts 7
United States not liable 8

1. Affidavit required

Suit can not be allowed to proceed in forma pauperis unless plaintiff's attorney makes the statutory affidavit. *Ex parte Saunders* (1928, 48 S. Ct. 158, 275 U.S. 507, 72 L. Ed. 397). See, also, *United States* v. *Ross* (C.C.A. 6, 1924, 298 F. 64).

2. Citizens

Privileges of the forma pauperis statute are extended only to citizens of the United States. *The Memphian* (D.C. Mass. 1917, 245 F. 484). See, also, *Johnson* v. *Nickloff* (C.C.A. 9, 1931, 52 F. 2d 1074).

3. Clerk to pay costs

In forma pauperis action which is denied the clerk shall pay the costs. *Aldridge* v. *United States* (1931, 51 S. Ct. 333, 282 U.S. 836, 75 L. Ed. 743). See, also, *Drazich* v. *Archer* (1931, 51 S. Ct. 180, 282 U.S. 893, 75 L. Ed. 787).

4. Courts included

Right to prosecute in forma pauperis suits without paying fees or costs does not extend to appellate courts *In re Abdu* (1918, 38 S. Ct. 447, 247, 62 L. Ed. 966).

5. Jurisdiction of court

To prosecute an appeal or writ of error to the Supreme Court in forma pauperis, it must appear from the record that the court has jurisdiction. *Kinney* v. *Plymouth Rock Squab Co.* (1915, 35 S. Ct. 236, 236 U.S. 43, 59 L. Ed. 457). See, also, *Pothier* v. *Rodman* (1923, 43 S. Ct. 374, 261 U.S. 307, 67 L. Ed. 670).

6. Proceedings in admiralty

Congress did not intend to deny to poor persons of the United States the right to proceed in admiralty. *Washington-Southern Nav. Co.* v. *Baltimore & P. Steamboat Co.* (1924, 44 S. Ct. 220, 263 U.S. 629, 68 L. Ed. 480).

7. Transcripts

As Congress did not grant to the court the power to authorize payment for transcripts of testimony for poor persons, the court has no such authority. *United States ex rel. Estabrook* v. *Otis* (C.C.A. 8, 1927, 18 F. 2d 689).

8. United States not liable

Congress did not intend that the United States should be liable for any of the costs incured under the provisions of this act. *United States* v. *Fair* (D.C. Cal. 1916, 235 F. 1015).

§ 15–713. Deposits for jury trials in Court of General Sessions.

Deposits made on demands for jury trials in accordance with rules prescribed by the District of Columbia Court of General Sessions under authority granted in section 15–709 shall be earned unless, prior to three days before the time set for trial, including Sundays and legal holidays, a new date for trial is set by the court, cases are discontinued or settled, or demands for jury trials are waived. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, §1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–749, 11–751a (June 7, 1924, ch. 292, 42 Stat. 564, and certain provisions from subsequent appropriation acts, including act Apr. 8, 1960, Pub. L. 86–412, § 1, 74 Stat. 21, the 1960 act having been continued for the 1962 and 1963 fiscal years by acts Sept. 21, 1961, Pub. L. 87–265, § 15, 75 Stat. 564, and Oct. 23, 1962, Pub. L. 87–867, § 15, 76 Stat. 1155, respectively; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

The provisions are taken from section 11–749 of D.C. Code, 1961 ed. Section 11–751a of the Code, enacted by the act of Oct. 23, 1962, Pub. L. 87–873, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

§ 15–714. Witness fees for attendance in Court of General Sessions.

(a) There shall be paid to witnesses in criminal cases in the District of Columbia Court of General Sessions, not exceeding seventy-five cents per diem for each day of attendance, to be allowed only in the discretion of the court.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the District of Columbia Court of General Sessions other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., 11–1520a (July 1, 1902, ch. 1351, 32 Stat. 561; Oct. 23, 1962, Pub. L. 87–873, §5(b)(c), 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 5(b)(c), 77 Stat. 78).

In Subsec. (b), "criminal division" is substituted for "criminal branch". See section 11–901 herein and revision note thereunder.

CROSS REFERENCES

Fees of jurors and witnesses at inquests, see § 11–1906.

Per diem and mileage for witnesses in courts of the United States, see U.S. Code, Title 28, § 1821 et seq.

§ 15–715. Witness fees in prosecutions for cruelty to children or animals.

An officer or member of the Humane Society is not entitled to any fee as a witness in the prosecution of a case of cruelty to children or animals. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–755b (June 25, 1892, ch. 135, § 1, 27 Stat. 60; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190).

Section is from the last clause of section 11–755b of D.C. Code, 1961 ed.

The provision of section 11–755b that the municipal courts (now Court of General Sessions) have jurisdiction in all cases arising under section 32–209 is omitted as obsolete, since section 32–209 now refers to the juvenile court under a 1906 act.

The provision of section 11–755b that witnesses in case of cruelty to children or animals in the District of Columbia be allowed the same witness fees as allowed in other cases by law is omitted as unnecessary.

Changes are made in phraseology.

§ 15–716. Advances to Court of General Sessions clerk for witness fees.

The Board of Commissioners or its authorized representative may advance to the clerk of the Dis-

trict of Columbia Court of General Sessions upon requisition previously approved by the Board of Commissioners or its authorized representative, sums of money not exceeding $500 at any one time, to be used for the payment of witness fees. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1521 (June 30, 1945, ch. 209, § 1, 59 Stat. 281; July 9, 1946, ch. 544, § 1, 60 Stat. 510).

"Board of Commissioners or its authorized representative" is substituted for "disbursing officer of the District of Columbia" and for "Auditor of the District of Columbia" pursuant to Presidential Reorganization Plan No. 5 of 1952 and the Board's Reorganization Order No. 121, 57–3276, dated Dec. 12, 1957, as amended. See revision note under section 11–984 herein.

Changes are made in phraseology.

Cross Reference

General provisions for advancement of money by disbursing officers, see § 1–263.

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

DISTRIBUTION TABLE

For disposition of former sections of this title, see table preceding Title 11

Chap.		Sec.
1.	Account	16–101
3.	Adoption	16–301
5.	Attachment and Garnishment	16–501
6.	Bonds and Undertakings	16–601
7.	Criminal Proceedings in the Court of General Sessions	16–701
9.	Divorce, Annulment, Separation, Support, Etc	16–901
11.	Ejectment and Other Real Property Actions	16–1101
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15.	Forcible Entry and Detainer	16–1501
17.	Gaming Transactions	16–1701
19.	Habeas Corpus	16–1901
21.	Joint Contracts	16–2101
23.	Juvenile Court Proceedings	16–2301
25.	Change of Name	16–2501
27.	Negligence Causing Death	16–2701
29.	Partition and Assignment of Dower	16–2901
31.	Probate Court Proceedings	16–3101
33.	Quieting Title Obtained by Adverse Possession	16–3301
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37.	Replevin	16–3701
39.	Small Claims and Conciliation Procedure in Court of General Sessions	16–3901
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AMENDMENT

1964—Section 3(c)(2) amended the chapter analysis of title 16 by inserting chapter 6 therein.

Chapter 1.—ACCOUNT

Sec.
16–101. Parties.

§ 16–101. Parties.

An action of account shall and may be brought against the executor and administrator of every guardian, bailiff and receiver; and by one joint-tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such a joint-tenant or tenant in common. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–101 (4 Ann. ch. 16, § 27, 1705; Kilty Rep., p. 247; Alex. Br. Stat. p. 664; Comp. Stat. D.C., p. 447, § 34).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Application of statute 2
Consent to reference 3
Construction with Federal Court Rules 4
Exceptions 5
Findings of auditor 6
Form of auditor's report 7
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Law governing 8
Power to make reference 9
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1. In general

This chapter of the code does not deprive a party, in a proper case, of a trial by the common law triers of fact, but provides a simple and workable method by which he may secure it. *Lincoln* v. *Virginia Portland Cement Co.* (1919, 258 F. 505, 49 App. D.C. 33). See, also, *Simmons* v. *Morrison* (13 App. D.C. 161).

2. Application of statute

The statute applies only to actions at law wherein a mutual accounting between the parties is involved. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

3. Consent to reference

A failure to object to an order of reference is equivalent to a consent thereto. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

Consent to a common-law reference, however, which does not amount to a stipulation of reference for a finding of law and fact, does not amount to a waiver of a trial by jury, if by proper exception issues of fact can be framed for submission to a jury. *Eichberg* v. *United States Shipping Bd.* (1923, 285 F. 928, 52 App. D.C. 194).

4. Construction with Federal Court Rules

Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, under which absence of exceptions to auditor's report does not make auditor's findings conclusive, invalidates contrary provision of this section. *Shima* v. *Brown* (1943, 133 F. 2d 48, 77 U.S. App. D.C. 115, certiorari denied 63 S. Ct. 982, 318 U.S. 787, 87 L. Ed. 1154).

5. Exceptions

"It is the right of parties who file exceptions to withdraw them. They are not bound to let them stand because other parties may find it to their advantage to have them retained." Other parties could have taken their own exceptions. *Gilbert* v. *Washington Beneficial Endowment Assn.* (21 App. D.C. 344). See, also, *United States* v. *Groome* (13 App. D.C. 460); *American Ice Co.* v. *Eastern Trust & Banking Co.* (17 App. D.C. 422, affirmed 23 S. Ct. 432, 188 U.S. 626, 47 L. Ed. 623).

The allowance of amendments to exceptions is also within the court's discretion. *Lincoln* v. *Virginia Portland Cement Co.* (1919, 258 F. 505, 49 App. D.C. 33).

If there are no disputed facts, it is not error to refuse to submit an exception to the jury. *Id.*

"The exceptions, to be sufficient to avoid judgment on the report, must respond to the original issues made by the pleadings, as further defined and limited by the approved findings of the auditor. If proper exceptions are filed, in so far as they dispute the findings of fact by the auditor, they created issues to be submitted to the jury, and, upon the issues so defined, the trial will proceed in all respects as if no reference or report had been made." *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

"Failure to except to a finding (of the auditor), as we understand the statute, is equivalent to an admission that it is correct." *Weinstein* v. *Julius Lansburgh Furn. & Carpet Co.* (1922, 278 F. 580, 51 App. D.C. 271).

"As we understand chapter 4 of the Code (§§ 16–102 to 16–106), the party defeated before the auditor must except to his ultimate finding, and to every other finding which he believes prejudicially affects that finding, and must state with particularity the grounds of each exception. In other words, he must show the relation between the subordinate finding and the ultimate one, and that, if his theory is correct, the ultimate one is wrong in whole or in part." *Id.*

Exceptions cannot be to matters de hors the report. *Id.*

6. Findings of auditor

"The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand unless some obvious error has intervened in the application of the law or the

principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest." *France* v. *Coleman* (29 App. D.C. 286, dismissed 28 S. Ct. 258, 207 U.S. 601, 52 L. Ed. 359). See, also, *Richardson* v. *Van Auken* (5 App. D.C. 209; *Grafton* v. *Paine* (7 App. D.C. 255, appeal dismissed 18 S. Ct. 942, 168 U.S. 704, 42 L. Ed. 1212); *Smith* v. *American Bonding & Trust Co.* (12 App. D.C. 192); *Hutchins* v. *Munn* (28 App. D.C. 271, affirmed 28 S. Ct. 504, 209 U.S. 246, 52 L. Ed. 776); *Consaul* v. *Cummings* (24 App. D.C. 36).

In the absence of exceptions under a general submission, the auditor's report when admitted on trial before a jury is prima facie evidence both of the facts and conclusions of fact therein contained. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

7. Form of auditor's report

As to modification by Court of Appeals of decree approving auditor's report, because defective in form, see *Eclipse Bicycle Co.* v. *Farrow* (24 App. D.C. 311 reversed on other grounds 26 S. Ct. 150, 199 U.S. 581, 50 L. Ed. 317).

8. Law governing

Under Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, the absence of exceptions to a master's report in jury action does not make the master's findings conclusive. *Shima* v. *Brown* (1943, 133 F. 2d 48, 77 U.S. App. D.C. 115, certiorari denied 63 S. Ct. 982, 318 U.S. 787, 87 L. Ed. 1154).

In jury action to recover for board including room, defendant was not prejudiced by district court's refusal to let defendant withdraw exceptions to auditor's report, since presence or absence of exceptions was immaterial under Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, which makes auditor's findings mere evidence unless parties stipulate that they shall be final. *Id.*

In jury action to recover for board including room, the district court was bound by Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, under which absence of exceptions to auditor's report does not make his findings conclusive, and properly refused to confirm the auditor's report. *Id.*

9. Power to make reference

Court has inherent power to make references in actions at law to the same extent as in equity. A compulsory reference with power to determine issue is impossible in view of constitutional provisions. But no reason exists why a compulsory reference to simplify and clarify the issues and to make tentative findings cannot be made at law, when occasion arises, as freely as in equity. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

Reference of complicated questions of fact to an auditor to hear the evidence and make findings of fact has long been recognized as an appropriate proceeding in an action at law, and, in this case, no reason is shown why it should be transferred from law to equity side. *United States Shipping Bd. Merchant Fleet Corp.* v. *United States Fidelity & Guar. Co.* (1935, 77 F. 2d 370, 64 App. D.C. 247).

10. Selection of auditor

The selection of a special auditor is within the discretion of the trial court. *Lincoln* v. *Virginia Portland Cement Co.* (1919, 258 F. 505, 49 App. D.C. 33).

Chapter 3.—ADOPTION

Sec.

16–301. Jurisdiction—Rules.
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§ 16–301. Jurisdiction—Rules.

(a) Subject to subsection (b) of this section, the Domestic Relations Branch of the District of Columbia Court of General Sessions has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

(1) petitioner is a legal resident of the District of Columbia;

(2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition; or

(3) the child to be adopted is in the legal care, custody, or control of the Commissioners or a child-placing agency licensed under the laws of the District.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 16–210 (June 8, 1954, ch. 272, § 3, 68 Stat. 241; Apr. 11, 1956, ch. 204, § 107(b), 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 2 of act June 8, 1954, ch. 272 (68 Stat. 241), cited above, which was classified to section 16–209 of D.C. Code, 1961 ed., contained provisions defining four terms as used in the other provisions of chapter 2 of Title 16 of the Code (carried into this chapter), as follows: "Commissioners", as meaning the Board of Commissioners of the District of Columbia, or their designated agents; "District", as meaning the District of Columbia; "licensed child-placing agency", as meaning a child-placing agency licensed under the laws of the District of Columbia; and "adoptee", as meaning a person with respect to whose adoption a petition had been filed under the above-mentioned Act or with respect to whom an interlocutory or final decree of adoption was in effect. The section is omitted from this revised Part as unnecessary in view of the rewording of the other provisions of chapter 2 of Title 16 of D.C. Code, 1961 ed., that are carried into this chapter. It should be perfectly clear that "Board of Commissioners", or "Board", as used in the revised provisions, means only the Board of Commissioners of the District of Columbia or the Board's designated agents; that "District", as used in this chapter, means only the District of Columbia; and that "licensed child-placing agency" means only a child-placing agency licensed under the laws of the District of Columbia. With respect to "adoptee", the word "prospective" is inserted before that term whenever it is necessary to designate a person whose adoption is proposed but who has not reached the status of an adoptee by interlocutory or final decree.

Changes are made in phraseology.

CROSS REFERENCE

Domestic Relations Branch, see § 11–1101, et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Control of child by court 1
Court's authority measured by statute 2
Function of court 3
Interracial adoptions 4
Notice 5
Proceeding as statutory 6
Purpose of statute 7
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1. Control of child by court

The court was without jurisdiction of adoption proceeding where both the child and the child's custodian were in Virginia and so not in court's control. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

2. Court's authority measured by statute

Adoption is a creature of statute, and the court's authority must necessarily be measured by the statutory law. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

3. Function of court

The provision of former § 16–201 that the court insure by special rules that the interests of natural parents be fully before it, meant that the court was to insure, to the fullest practicable extent, that the failure of the father of an adoptee born out of wedlock to acknowledge the adoptee was a definitive act. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

In adoption proceeding, it is function of District Court, not of appellate court, to determine the best interest of the infant. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

4. Interracial adoptions

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

5. Notice

Former § 16–201 required that known natural father receive official notice unless he voluntarily appeared and consented pursuant to some unofficial notice or knowledge. *In re Adoption of a Minor* (App. D.C. 1947, 160 F. 2d 928).

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

6. Proceeding as statutory

Adoption proceedings are statutory in character. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

7. Purpose of statute

The process of adoption is for the protection of the child when the natural parents, if living, either repudiate, in the case of the mother, or fail to admit, in the case of the father, their responsibilities. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Protection of adoptees and their interests is a dominant purpose of the adoption act. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

8. Report of Board of Public Welfare

An investigation by and the report of the Board of Public Welfare may not, in all cases, satisfy the statutory requirement that the interests of the adoptee be fully protected, as where no report was made as to the character of an absentee natural parent when this was a vital issue, assuming that the board was authorized to make such an investigation. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

§ 16–302. Persons who may adopt.

Any person may petition the court for a decree of adoption. A petition may not be considered by the court unless petitioner's spouse, if he has one, joins in the petition, except that if either the husband or wife is a natural parent of the prospective adoptee, the natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption. If the marital status of the petitioner changes after the time of filing the petition and before the time the decree of adoption is final, the petition must be amended accordingly. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–211 (June 8, 1954, ch. 272, § 4, 68 Stat. 241).

Word "prospective" is inserted before "adoptee". See revision note under section 16–301 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Interracial adoptions

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16–303. Persons adopted.

A person, whether a minor or an adult, may be adopted. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–212 (June 8, 1954, ch. 272, § 5, 68 Stat. 241).

A minor change is made in phraseology.

§ 16–304. Consent.

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Board of Commissioners of the District, or unless a relinquishment of parental rights with respect to the prospective adoptee has been recorded and filed as provided by section 32–786.

(b) Consent to a proposed adoption of a person under twenty-one years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are or were married and are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the mother in the case of a prospective adoptee born out of wedlock, unless the prospective adoptee has been legitimated according to the laws of any jurisdiction, in which case the consent of the father is also required if he is alive; or

(D) from the mother of a prospective adoptee born in wedlock, if the illegitimacy of the prospective adoptee has been established to the satisfaction of the court; or

(E) from the court-appointed guardian of the prospective adoptee; or

(F) from a licensed child-placing agency or the Board of Commissioners in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or

by a release of parental rights to the Board or licensed child-placing agency, based upon consents obtained in accordance with paragraphs (A) through (E) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; or

(G) from the Board of Commissioners in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

(f) A person over twenty-one years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–213 (June 8, 1954, ch. 272, § 6, 68 Stat. 241).

"Board of Commissioners of the District", "Board of Commissioners", or "Board", is substituted for "Commissioners", and "prospective" is inserted before "adoptee" in a number of places. See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion 1
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1. Abuse of discretion

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

2. Acknowledgment

Natural father's acknowledgment of child, making it necessary to obtain his consent to adoption, must be established by definitive act and not by testimony concerning his actions and attitude from his initial knowledge of probable birth of child until the hearing *In re Adoption of a Minor* (App. D.C. 1947, 160 F. 2d 928).

A natural father's failure to acknowledge child need not be affirmatively registered with the court to permit adoption of child without his consent, but father cannot be concluded thereby if he is unaware that occasion for action has arisen. *Id.*

"Acknowledgment," within this section is a definitive acknowledgment. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

3. Appearance of adoptees

Boys 12 and 14 years old, respectively, in proceedings to adopt them, should appear for examination by the court in order to bring their interests before it, when no one legally capable of representing them appears. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

4. Application for stay

In proceeding for adoption of minor, where father's application for stay on ground that his ability to defend was seriously affected by reason of his military service, was supported by uncontested affidavits, denial of the application without finding whether father's ability to conduct defense was materially affected by reason of his military service was error. *In re Adoption of a Minor* (1943, 136 F. 2d 790, 78 U.S. App. D.C. 48).

5. Conclusiveness of agreement

Where full consents to adoption of minor child were signed by natural parents and contained acknowledgment of parental status, name of infant, where it was born and date thereof and were accompanied by statement demonstrating that both parties fully understood their legal rights respecting child and that they surrendered her to others unknown for purpose of adoption as prescribed by laws of state of place in which adoption was to be effected and that they were to remain unknown to infant and adopting parents, such consents were clear, unequivocal, and, having been made voluntarily, were binding upon signatories. *In re Adoption of a Minor Child* (1955, 127 F. Supp. 256).

6. Decree, requirements of

Where court granted petition for adoption of infant although natural father of infant did not consent to adoption, and trial court made no finding or ruling as to any of the permissive statutory grounds for granting of such petition when natural parent refuses to consent to adoption, decree was not in form or in context which would give it requisite legal basis. *In re Adoption of a Minor* (1952, 194 F. 2d 325, 90 U.S. App. D.C. 107).

7. Discretionary power of court

Since "extraordinary cause" must be established to the satisfaction of the court, a broad measure of discretion is vested in the District Court, and its decision on "this question" will be disturbed only on a showing that there has been a grave abuse of this discretion. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

8. Father's rights

Where decree granting petition for adoption of infant daughter of petitioner's wife by her former husband is supported by sufficient fact findings, which evidence supported, and conclusions of law, and recites that natural father's consent to adoption should be dispensed with for extraordinary cause, which constitutes one of statutory grounds, decree should not be set aside by Court of Appeals. *In re Adoption of a Minor* (1953, 204 F. 2d 55, 92 U.S. App. D.C. 163).

Under former § 16–202, the rights of the father of an illegitimate child in respect to adoption are the same as if the child were legitimate, if the father chooses to assert those rights *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

The father of an illegitimate child, if he had been formally notified of adoption proceedings, would have had rights under the Soldiers' and Sailors' Civil Relief Act of 1940, title 50 Appendix, U.S. Code § 521. *Id.*

9. Federal laws staying proceedings

50 Appendix, U.S. Code, § 521, making mandatory the staying of proceeding when application is made on behalf of one in military service unless in court's opinion ability of "defendant" to conduct defense is not materially affected by reason of his military service, includes

proceeding for adoption of minor child of person in military service. *In re Adoption of a Minor* (1943, 136 F. 2d 790, 78 U.S. App. D.C. 48).

In proceeding for adoption of a minor wherein the minor's father filed application for stay on ground that his ability to defend was seriously affected by reason of his military service, the Soldiers' and Sailors' Civil Relief Act, title 50 Appendix, U.S. Code, §§ 501 et seq., and 521, made it trial judge's duty to find whether the father's ability to conduct defense was materially affected by reason of his military service. *Id.*

10. Guardian ad litem

A request for the appointment of a guardian ad litem made by an absentee natural parent should be granted, in the absence of a rule otherwise providing. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

11. Law of forum

Even though natural mother signed consent for adoption of her minor child in state of Pennsylvania, where petition for adoption was filed in District of Columbia, District of Columbia law was controlling, and natural mother could not withdraw written consent as late as time of hearing on petition for adoption, as allowed by Pennsylvania law. *In re Adoption of a Minor Child* (1954, 127 F. Supp. 256).

Under District of Columbia law, consent for adoption of minor child, signed by natural mother, where otherwise legally sufficient, is not subject to objection that it does not reveal identity of adoptive parents. *Id.*

12. Natural parents

A non-parent may not obtain possession of a child and thereafter invoke processes of court to consummate its adoption against wishes and without consent of child's mother. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

Where property settlement agreement of husband and wife included provision relative to custody of child, and creation of trust for support, incorporation of that agreement in Florida divorce decree, without a limitation as to any part thereof, was an incorporation of the custody provisions for purpose of former § 16–202 declaring that consent of natural parent to adoption is not necessary where parent has been permanently deprived of custody of the adoptee by court order. *In re Adoption of a Minor* (1954, 214 F. 2d 844, 94 U.S. App. D.C. 131).

In former § 16–202 prohibiting adoption decree unless court finds that natural parents have consented, use of plural "parents" conferred basic right of consent upon natural father. *In re Adoption of a Minor* (App. D.C. 1947, 160 F. 2d 928).

"Natural parents" includes the father of an illegitimate child particularly in view of provision of former § 16–202 specifying circumstances under which consent of father need not be secured. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

13. Notice

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

14. Permanent deprivation of custody

Under former § 16–202, dispensing with necessity of consent of natural parent to adoption where parent has been permanently deprived of custody of the adoptee by court order, father who, by Florida divorce decree incorporating by reference a property settlement agreement including custody provision, had been deprived of even his right of visitation in that decree gave entire control and custody to mother, with right being in child to visit and see father, was "permanently deprived of custody", and could not object to adoption because his consent was not given. *In re Adoption of a Minor* (1954, 214 F. 2d 844, 94 U.S. App. D.C. 131).

15. Procedure generally

In adoption proceedings, the existence of consents of the parents, facts which justify failure to secure them and circumstances which permit their being dispensed with, are part of the procedure of reaching a just judgment. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

16. Questions of fact

Whether natural father acknowledged child and contributed voluntarily to its support, so as to require his consent to adoption, are questions of fact. *In re Adoption of a Minor* (App. D.C. 1947, 160 F. 2d 928).

17. Statutory ground, establishment of

If petition for adoption of infant without consent of natural father of infant is granted on permissive statutory ground, decree should so state, and basis for such conclusion, though not necessary to be recited in decree itself, should appear in findings, or in some other matter, such as in opinion of court, with adequate evidentiary support in record, and Court of Appeals could not make such determination in first instance. *In re Adoption of a Minor* (1952, 194 F. 2d 325, 90 U.S. App. D.C. 107).

18. Sufficiency of consent

Where, two months prior to birth of illegitimate child, mother signed paper consenting to adoption after having obtained advice of her family physician and the mother acknowledged execution of the consent the day after the birth of the child, the consent was sufficient to satisfy statutory requirements. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

In adoption proceeding, record established that consent of natural mother was voluntarily given and was given with knowledge of its consequences. *Id.*

Under this chapter, consent of natural mother accompanying petition for adoption of an illegitimate infant is sufficient, and she need not be actually present, consenting at time of hearing. *Id.*

19. Evidence

Evidence warranted refusal to permit adoption of illegitimate child whose natural father was in naval service when child was born and when mother consented to adoption, on ground that he acknowledged child, contributed to its support and definitely refused to consent to adoption when official opportunity was offered. *In re Adoption of a Minor* (App. D.C. 1947, 160 F. 2d 928).

20. Volutary contributions

Payments which father voluntarily sent to mother of child born out of wedlock, which were large in proportion to his pay, and which were sent during period from beginning of his receipt of pay until after child had been placed in custody of proposed adopters, were "voluntary contributions." *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

The provision, in former § 16–202, that consent of the father of an adoptee born out of wedlock shall not be necessary unless he has both acknowledged the adoptee and contributed voluntarily to its support, does not require that the contribution occur after birth of the child. *Id.*

In proceeding for adoption of illegitimate child, whether payments by father were voluntary contributions to support of the child was a question of law. *Id.*

21. Withdrawal of consent

A natural mother, who has freely and voluntarily given consent to adoption of her illegitimate child, cannot, without cause, withdraw that consent and thus prevent the adoption when the adoptive parents have accepted the child, paid expenses of pre-natal and post-natal care, made a home for the child, and in all respects satisfied requirements of this chapter governing adoption. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

In adoption proceeding involving question whether natural mother, who had freely and voluntarily given consent to adoption of her illegitimate child, could withdraw that consent, the fact that Board of Public Welfare and guardian ad litem appointed to represent the interest of the infant recommended against adoption was not controlling where both recommendations were made on assumption that the natural mother, as a matter of law, rightfully withdrew her consent. *Id.*

§ 16–305. Petition for adoption.

A petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: "Ex parte in the matter of the petition of _____ _____ for adoption." The petition or the exhibits annexed thereto shall contain the following information:

(1) the name, sex, date, and place of birth of the prospective adoptee, and the names, addresses and residences of the natural parents, if known to the petitioner, except that in an adoption proceeding that is consented to by the Board of Commissioners or a licensed child-placing agency, the names, addresses and residences of the natural parents may not be set forth;

(2) the name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

(3) the relationship, if any, of the prospective adoptee to the petitioner;

(4) the race and religion of the prospective adoptee, or his natural parent or parents;

(5) the race and religion of the petitioner;

(6) the date that the prospective adoptee commenced residing with petitioner; and

(7) any change of name which may be desired.

When any of the above facts is unknown to the petitioner, the petitioner shall state this fact. When any of the above facts is known to the Board of Commissioners, or a licensed child-placing agency that as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Board or the agency with the court. If more than one petitioner joins in a petition, the requirements of this section apply to each. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–214 (June 8, 1954, ch. 272, § 7, 68 Stat. 242).

Word "prospective" is inserted before "adoptee" in a number of places, and "Board of Commissioners", or "Board", is substituted for "Commissioners". See revision note under section 16–305 herein.

Changes are made in phraseology.

§ 16–306. Notice of adoption proceedings.

(a) Except as provided by subsection (b) of this section, due notice of pending adoption proceedings shall be given to each person whose consent is necessary thereto, immediately upon the filing of a petition. The notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

(b) A party who formally gives his consent to the proposed adoption, as provided by this chapter, thereby waives the requirement of notice to him pursuant to this section. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–215 (June 8, 1954, ch. 272, § 8, 68 Stat. 243).

Changes are made in phraseology.

§ 16–307. Investigation, report, and recommendation.

(a) Except as provided by section 16–308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

(1) the licensed child-placing agency by which the case is supervised; or

(2) the Board of Commissioners, if the case is not supervised by a licensed child-placing agency.

(b) The investigation, report, and recommendation shall include:

(1) an investigation of:

(A) the truth of the allegations of the petition;

(B) the environment, antecendents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;

(C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and

(D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge;

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–216 (June 8, 1954, ch. 272, § 9, 68 Stat. 243).

"Board of Commissioners" is substituted for "Commissioners", and, in several places "prospective" is inserted before "adoptee". See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

§ 16–308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.

The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

(1) the prospective adoptee is an adult; or

(2) the petitioner is a spouse of the natural parent of the prospective adoptee and the natural parent consents to the adoption or joins in the petition for adoption.

(Dec. 23, 1963, 77 Sat. 539, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–217 (June 8, 1954, ch. 272, § 10, 68 Stat. 244).

Word "prospective" is inserted before "adoptee". See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

§ 16–309. Adoption proceedings.

(a) Within a period of ninety days, or such time as extended by the court, after a copy of the petition

and the order providing for the report is served upon the agency directed to make the investigation, the agency shall make the report and recommendation required by section 16–307 to the court and thereupon the court shall proceed to act upon the petition.

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that:

(1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) the petitioner is fit and able to give the prospective adoptee a proper home and education; and

(3) the adoption will be for the best interests of the prospective adoptee.

(c) A final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least six months.

(d) If it appears to be in the interest of the prospective adoptee, the court may enter an interlocutory degree of adoption, which shall by its terms automatically become a final decree of adoption on a day therein named, not less than six months nor more than one year, from the date of entry of the interlocutory decree, unless in the interim the decree shall have been set aside for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.

(e) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before the revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all of them to be heard.

(f) All proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–218 (June 8, 1954, ch. 272, § 11, 68 Stat. 244).

In subsec. (a) of this section, a reference to section 16–215 of D.C. Code, 1961 ed., is changed to refer to section 16–307 herein, which is based on section 16–216 of the Code, to correct an apparent error in the 1954 act.

Word "prospective" is inserted before "adoptee" in a number of places. See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeals 1
Appearance 2
Best interests of infant 3
Control of child by court 4
Entry of final decree 5
Evidence, admissibility 6
Interracial adoptions 7

1. Appeals

An aggrieved party may appeal from a final order of the District Court in an adoption proceeding. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

2. Appearance

Where summons in adoption proceeding was delivered to child's legal custodian in another jurisdiction, his letter to clerk of court stating that he was not interested in outcome of suit and that letter was to be treated as his answer to the summons was not an "appearance," but a mere acknowledgment of summons. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

3. Best interests of infant

Under former § 16–203, providing that after considering adoption petition, the consents, and evidence presented an adoption decree may be entered if court is satisfied that adoptee is physically, mentally, and otherwise suitable for adoption and that petitioner is fit and a change will be for best interests of adoptee, primary duty of District Court is to determine the best interests of the infant. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

4. Control of child by court

The provision of former § 16–203 that no final decree in adoption proceedings shall be entered unless child has lived for at least six months with adopting parents, and that an interlocutory decree may become final at the end of six months, contemplates placing child in custody of adopting parents at time of interlocutory decree, and indicates intent that child must be within the court's control. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

The court was without jurisdiction of adoption proceeding where both the child and the child's custodian were in Virginia and so not in court's control. *Id.*

5. Entry of final decree

Filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption. *Hall et al.* v. *Scarlett et al.* (1951, 188 F. 2d 990, 88 U.S. App. D.C. 201, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357).

6. Evidence, admissibility

In adoption proceeding, reports from guardian ad litem appointed to represent interest of infant and from Board of Public Welfare, and such other information and advice as might be available, were admissible on issue of best interests of infant. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

7. Interracial adoptions

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16–310. Finality of decrees of adoption.

An attempt to invalidate a final decree of adoption by reason of a jurdisdictional or procedural defect may not be received by any court of the District, unless regularly filed with the court within one year following the date the final decree became effective. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–219 (June 8, 1954, ch. 272, § 12, 68 Stat. 244).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. In general

This section providing that no attempt to invalidate final decree of adoption by reason of any jurisdictional or procedural defect shall be received by any court unless regularly filed within one year following time final decree became effective would preclude any attack, made more than three years thereafter, by mother averring that she had never consented to adoption of child who was born to her, out of wedlock, when she was 16 years old and was committed to Department of Public Welfare, and expressed belief that neither her mother nor

putative father had consented, and whose counsel admitted that it was a distinct possibility that adoption would be contested. *In re Wells* (C.A.D.C. 1960, 281 F. 2d 68).

§ 16–311. Sealing and inspection of records and papers.

From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–221 (June 8, 1954, ch. 272, § 14, 68 Stat. 245).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. In general

This section providing that records and papers in adoption proceedings shall, from and after filing of petition, be sealed and not be inspected by any person except on order of court when satisfied that welfare of child will be thereby promoted, precluded inspection by mother who made no showing how welfare of child would be served by inspection but who sought inspection averring that she had never consented to adoption of her child who was born out of wedlock and was committed to Department of Public Welfare and that she sought inspection so that she might know status of her first-born and whose counsel admitted that contesting adoption decree was a distinct possibility. *In re Wells* (C.A.D.C. 1960, 281 F. 2d 68).

§ 16–312. Legal effects of adoption.

(a) A final decree of adoption establishes the relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adoptor. The adoptee takes from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off, except that when one of the natural parents is the spouse of the adoptor, the rights and relations as between adoptee, that natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, are in no wise altered.

(b) While it is in force, an interlocutory decree of adoption has the same legal effect as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners are as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of the adopter unless the decree otherwise provides, and the given name of the adoptee may be fixed or changed at the same time. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–222 (June 8, 1954, ch. 272, § 15, 68 Stat. 245).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction 1
Entry of final decree 2
Natural parent's rights after decree 3

1. Construction

The question of the right of petitioner to inherit from her natural aunt, through her relationship to her natural father was cut off by former §§ 16–201 to 16–207, was governed by provisions of former § 16–205, which by its very terms was prospective. *Hall* v. *Scarlett* (1950, 181 F. 2d 277, 86 U.S. App. D.C. 165, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357, rehearing denied 188 F. 2d 990, 88 U.S. App. D.C. 201).

Under this section providing that a final decree of adoption shall establish relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession the same as if adoptee was born to adoptor, and that adoptee shall take from, through, and as representative of his adoptive parents in same manner as a child by birth, adopted child of testatrix' daughter acquired a right to inherit from testatrix, who died in 1958, notwithstanding fact that adopting parent died prior to enactment of such statute, and adopted child had standing to file a caveat to the will. *In re Estate of Gray, etc., deceased* (1953, 168 F. Supp. 124).

Former § 16–205 providing that entry of a final decree of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adopter, except that adoptee shall not inherit from collateral relatives or parents of adopter though such collateral relatives and parents of adopter shall have right of inheritance from adoptee, did not entitle adopted children of beneficiary of testamentary trust created by aunt of beneficiary to take that share which natural children of beneficiary would take under will on death of beneficiary, where it was obvious from will that testatrix definitely had in mind descent of her property through blood relatives to persons of her own blood. *Noreen et al* v. *Sparks et al.* (1952, 103 F. Supp. 588, motion denied 104 F. Supp. 675, cause remanded 204 F. 2d 56, 92 U.S. App. D.C. 164).

Former § 16–205 did not preclude adopted children from taking property devised to them by will of collateral relative of their adopting mother, if it clearly appears that such was intent of testatrix, but affords no basis for conclusion that such was the intent. *Id.*

Although the petitioner was an adopted child of decedent, her maternal grandmother, and was such at the time of decedent's death, the adoption decree being prior to August 25, 1937, former § 16–205 did not cut off her right of distribution from the estate of the decedent and she was entitled to the sole distribution. *In re Penfield's Estate* (1949, 81 F. Supp. 622).

2. Entry of final decree

In former § 16–205, provision that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, referred to entry of final decree under or in view of former §§ 16–201 to 16–207 either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption. *Hall et al.* v. *Scarlett et al.* (1951, 188 F. 2d 990, 88 U.S. App. D.C. 201, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357).

3. Natural parents rights after decree

Under former § 16–205, final decree of adoption terminated former relationship of natural parent and natural child, and on death of adopters the right of natural mother to custody of child was not revived. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

§ 16–313. Child as including adopted person.

In the District, "child" or its equivalent in a deed, grant, will, or other written instrument includes an adopted person, unless the contrary plainly appears by the terms thereof, whether the instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–224 (June 8, 1954, ch. 272, § 17, 68 Stat. 246).

Changes are made in phraseology.

§ 16–314. Birth certificates.

(a) Notice of a final decree of adoption shall be sent to the Board of Commissioners. Unless otherwise requested in the petition by the adopters, the Board shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court.

(b) If the adoption occurred outside the District either before or after August 25, 1937, upon filing with the Board of Commissioners a certified copy of the final decree of adoption, the Board shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption. The sealed package may be opened only by order of a court of competent jurisdiction.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in the proceeding. Upon presentation of a certified copy of the order the Board of Commissioners shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–223 (June 8, 1954, ch. 272, § 16, 68 Stat. 245).

"Board of Commissioners", or "Board", is substituted for "Commissioners". See revision note under section 16–301 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Entry of final decree

In former § 16–205, provision that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, referred to entry of final decree under or in view of former §§ 16–201 to 16–207 either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption. *Hall et al.* v. *Scarlett et al.* (1951, 188 F. 2d 990, 88 U.S. App. D.C. 201, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357).

§ 16–315. Prior proceedings.

The provisions of this chapter have no effect prior to June 8, 1954, except to the extent that they specifically so provide. They do not affect in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954. (Dec. 23, 1963, 77 Stat. 542, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–225 (June 8, 1954, ch. 272, § 18(b), 68 Stat. 246).

Section is from subsec. (b) of section 18 of act June 8, 1954. Subsec. (a) of that section repealed act August 25, 1937, ch. 774, 50 Stat. 806, which was classified to former sections 16–201 to 16–207 of D.C. Code, 1961 ed.

In the first sentence, words "shall have no retroactive effect" are changed to "have no effect prior to June 8, 1954" so that this section will continue to apply as of the date of its original enactment in 1954.

The remaining provisions of section 16–225 are retained in this section to preclude any question as to inheritance rights of an adopted child. These rights were changed (for future adoptees), first, by the act of August 25, 1937, referred to above, and second, by the act of June 8, 1954. Provisions of the latter act are carried into this chapter.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Construction

The question of the right of petitioner to inherit from her natural aunt, though her relationship to her natural father was cut off by former §§ 16–201 to 16–205, was governed by provisions of former section 16–205 which by its very terms was prospective. *Hall* v. *Scarlett* (1950, 181 F. 2d 277, 86 U.S. App. D.C. 165, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357, rehearing denied 188 F. 2d 990, 88 U.S. App. D.C. 201).

The non-retroactive provisions of former § 16–207 had application only to proceedings in the District under Act Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 395, completed before or pending August 25, 1937, but they clearly evidenced its policy that other provisions including those cutting off the rights of the adoptee to inherit from natural parents and collateral relatives, should not be construed as having application contrary to such policy. *In re Penfield's Estate* (1949, 81 F. Supp. 622).

Chapter 5.—ATTACHMENT AND GARNISHMENT

SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

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SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

§ 16–501. Attachment before judgment—Affidavit and bond.

(a) This section applies to any civil action in the United States District Court of the District of Columbia or the District of Columbia Court of General Sessions, for the recovery of:

(1) specific personal property;

(2) a debt; or

(3) damages for the breach of a contract, express or implied.

(b) In an action specified by subsection (a) of this section, the plaintiff, his agent, or attorney, may file an affidavit as provided by subsections (c) and (d) of this section either at the commencement of the action or pending the action.

(c) The affidavit shall comply with the following requirements:

(1) show the grounds of plaintiffs' claim;

(2) set forth that plaintiff has a just right to recover what is claimed in his complaint;

(3) where the action is to recover specific personal property, state the nature and, according to affiant's belief, the value of the property and the probable amount of damages to which plaintiff is entitled for the detention thereof;

(4) where the action is to recover a debt, state the amount thereof; and

(5) where the action is to recover damages for breach of a contract set out, specifically and in detail, the breach complained of and the actual damage resulting therefrom.

(d) The affidavit shall also state one of the following facts with respect to defendant:

(1) defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months;

(2) he evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District;

(3) he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him;

(4) he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or

(5) he fraudulently contracted the debt or incurred the obligation respecting which the action is brought.

(e) Before a writ of attachment and garnishment is issued, the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may sustain by reason of the wrongful suing out of the attachment.

(f) If the plaintiff files an affidavit and bond as provided by this section, the clerk shall issue a writ of attachment and garnishment, to be levied upon as much of the lands, tenements, goods, chattels, and

credits of the defendant as may be necessary to satisfy the claim of the plaintiff. (Dec. 23, 1963, 77 Stat. 543, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 16–301 (Mar. 3, 1901, ch. 854, § 445, 31 Stat. 1258; Apr. 19, 1920, ch. 153, 41 Stat. 563; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

References to "any action at law" and "his declaration" are changed to "any civil action" and "his complaint" to comply with present procedure under the rules.

In the 1901 Code, as continued in D.C. Code, 1961 ed., there were two groups of sections relating to attachment and garnishment. One group was Chapter 13, Attachments, of the 1901 Code and Chapter 3, Attachment and Garnishment, of Title 16 of the 1961 edition and is set out in this subchapter. The other group was in Chapter 26, Execution, of the 1901 Code and Chapter 3, Proceedings in Aid of Execution, of Title 15 of the 1961 edition, and is set out as subchapter II of this chapter, relating to attachment and garnishment after judgment in aid of execution.

Logically it would seem that, except for provisions governing the grounds for issuance of the writ and its relationship to the proceedings in the action in which it is issued, the procedure in attachment should be the same whether it is the usual attachment issued before judgment or an attachment issued after judgment in aid of execution, and therefore, that the provisions of subchapter I of this chapter would apply to attachment after judgment unless an inconsistent provision appears in subchapter II. But subchapter II, as enacted in 1901, contains a number of sections that repeat the provisions of sections of subchapter I, which would lead to the contrary assumption that subchapter II, relating to attachment after judgment, was intended to be complete in itself without reference to subchapter I. The difficulty is that some sections in subchapter I which would be expected to apply to attachment either before or after judgment are not repeated in subchapter II. For example, see section 16–528 of subchapter I which is from section 16–325 of D.C. Code, 1961 ed., and provides that a judgment of condemnation against the garnishee protects him against a claim by the defendant for the property or credits condemned.

If these two subchapters were originally intended to be independent of each other, additional problems arise with respect to subsequent acts which amend one subchapter without amending the corresponding section of the other, and acts which do not specify whether they apply to attachments before or after judgment or both. For examples, see sections 16–513, 16–514, 16–521, 16–533, and 16–551 herein.

Since the scope of this revision is limited to improvements in arrangement and phraseology, without changing the substance of the law, it is not possible to resolve these questions here. However, the provisions relating to the two types of attachments have been carried into this one chapter so that the corresponding provisions and the court decisions under them may be more easily read together.

Subchapter III of this chapter is derived from a 1959 act, as indicated in the notes under the individual sections therein.

The provisions of this chapter are continued in force by rule 64 of the Federal Rules of Civil Procedure under which certain provisional and final remedies, including attachment and garnishment are available under the circumstances and in the manner provided by the law of the "state" in which the district court is held, subject to certain qualifications.

Changes are made in the arrangement and phraseology of this section.

Cross References

Attachment and garnishment after judgment see §§ 16–541 to 16–555.

Attachment to enforce landlord's lien, see § 45–916.

Benefits from fraternal benefit association not subject to attachment or garnishment, see § 35–911.

Benefits payable under unemployment compensation law not subject to levy or attachment, see § 46–318.

Bonds generally, see § 28–2501 et seq.

Exemption of insurance benefits from attachments and garnishment, see §§ 35–717, 35–718.

Exemption of proceeds from life insurance, see § 30–213.

Exemption of sums recovered for wrongful death, see § 16–2703.

Garnishment of goods in possession of warehouseman, surrender of receipt, see § 28:7–602.

Old-age assistance given under the Social Security Act not subject to attachment or levy, see § 46–204.

Teacher's retirement annuity not subject to attachment, see § 31–718.

The provisions of this chapter relating to attachment apply to proceedings in the Court of General Sessions, see § 16–533.

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1. Affidavits

Affidavit which was filed after motion to quash attachment and which stated that the defendant was foreign corporation did not cure defect in original affidavit on which attachment before judgment was issued and which contained no averment that defendant was foreign corporation. *Graham Associates, Inc., etc.* v. *B. J. Fell* (D.C. App. 1963, 192 A. 2d 129).

Affidavit is basis for issuing attachment before judgment and cannot be supplied after the attachment has been issued. *Id.*

Verification of complaint describing defendant as Maryland corporation was not so fatally defective as to require quashing of attachment issued against defendant before judgment. *Id.*

Requirement that party seeking attachment before judgment must file an affidavit showing grounds of claim and setting forth that he has a just right to recover that which is claimed is not complied with by statement of a conclusion, but affidavit must state facts out of which claim arises and method of computing amounts said to be due must be set forth in detail. *Petroni* v. *Bass et ano.* (1960, 186 F. Supp. 759).

In action for debt for work, labor, and material furnished by plaintiff to defendants in repair and improvement of building, affidavit of plaintiff, who sought remedy of attachment before judgment, that plaintiff had a just right to recover on such cause of action did not sufficiently allege details of the claim, and, therefore, it was not sufficient to warrant such attachment. *Id.*

Affidavit preliminary to attachment before judgement, which stated the grounds for plaintiff's claim, a just right to recover, a prescribed type of action, and that defendant was a nonresident, was sufficient. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

In action by nonresident plaintiff to recover debt wherein nonresident defendant claimed that situs of

debt was in Maryland but made no affidavit and submitted no proof in support thereof, Municipal Court for the District of Columbia did not abuse its discretion in refusing to quash writ of attachment before judgment under the rule of forum non conveniens. *Rice* v. *Salnier* (D.C. Mun. App. 1952, 86 A. 2d 175).

Affidavits in an attachment proceeding become a part of the record on appeal. *Barbour* v. *Paige Hotel Co.* (2 App. D.C. 174).

An affidavit fully complies with the statute which states the ultimate fact substantially in its terms, without stating in connection therewith the probative facts which may be necessary to be shown in case of traverse. The same rule applies also to the allegation of the intent with which the act may have been done. *Wielar* v. *Garner* (4 App. D.C. 329).

It is ordinarily sufficient in an affidavit for attachment to follow the words of the statute substantially without stating the probative facts which go to show the ultimate conclusion. *Cissell* v. *Johnston* (4 App. D.C. 335).

Though the affidavit preceding the issuance of the writ may be so defective as to warrant a reversal of the judgment by an appellate court, such defect will not deprive the court of the jurisdiction acquired by the writ levied upon defendant's property. The proceeding being in rem, the levy of the writ "is the one essential requisite to jurisdiction." *Moses* v. *Hayes* (36 App. D.C. 194).

Affidavit in attachment before judgment required need not employ the precise language of this section, but words must be sufficiently similar to those of this section to allow drawing of conclusion which is called for by the exact language of this section. *Rieffer* v. *Home Indem. Co.* (D.C. Mun. App. 1948, 61 A. 2d 26, modified or other grounds 62 A. 2d 371).

Affidavit in support of attachment before judgment alleging that defendant left the District of Columbia at a time shown by affidavit to be within six months before filing of affidavit, that defendant's present whereabouts were unknown, and that defendant had temporarily withdrawn himself from district, was fatally defective for not alleging that defendant was evading the service of ordinary process by his withdrawal. *Id.*

2. Amendment of garnishment

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

3. Amount of recovery

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

4. Appealable orders

Under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to hear appeals from interlocutory order to orders whereby possession of property is changed or affected, order denying motion to quash writ of attachment is not appealable. *Clark* v. *District Discount Co.* (D.C. Mun. App. 1959, 151 A. 2d 198).

To be appealable, an interlocutory order must be one which, if carried into effect, would change or affect possession by changing the status quo ante the order, under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to review interlocutory orders to those orders whereby possession of property is changed or affected. *Id.*

Order overruling motion to quash service is not final and not appealable. *Id.*

5. Application for judgment against garnishee

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

6. Bonds

Where an attachment is issued against the property of one of several defendants, the bond properly runs to him and not to the other defendants against whom attachment did not issue. *Bradford* v. *Brown* (22 App. D.C. 455).

If the bond is defective, the defendant may move to quash the attachment. *Moses* v. *Hayes* (36 App. D.C. 194). See, also, *Hayes* v. *Conger* (36 App. D.C. 202).

Bond is sufficient if it is twice the amount sued upon; "uncertain costs and interest which may accrue during litigation are no part of a plaintiff's claim at the date of suit." *Rhodes* v. *Bowling Green White Stone Co.* (43 App. D.C. 298).

A surety on a bond given under section 454 of the Code (§ 16–310) can not object, except in case of fraud, to defects in original affidavits which render the attachment merely voidable. *National Surety Co.* v. *Poates* (43 App. D.C. 334).

The requirements of this section as to the filing of a bond are not superseded by the act of April 19, 1920 (41 Stat. 564), section 479a of the Code (§ 28–2403). *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (1922, 276 F. 631, 51 App. D.C. 109).

7. Breach of contract

Where defendant did not sound his case in tort, as he might have done, but sued specifically for breach of the lease agreement, charging that defendant had damaged the premises in breach of the lease agreement, such allegations brought his claim within the provisions of the attachment statute. *Fink* v. *Katz* (D.C. Mun. App. 1949, 68 A. 2d 813).

8. Burden of proof

To sustain writ of attachment, plaintiff had burden of proving that defendant was a nonresident. *D'Elia & Marks Co.* v. *Lyon* (1943, 31 A. 2d 647).

9. Construction

Remedy of attachment before judgment is purely statutory, is in derogation of the common law, and is a very drastic proceeding, and, therefore, this section permitting such an attachment should not receive a liberal construction, and strict compliance therewith should be required. *Petroni* v. *Bass et ano.* (1960, 186 F. Supp. 759).

In order for an attachment before judgment to be issued, the defendant must not be a resident of the District. The statute clearly prescribes residence, as distinguished from domicile, as the controlling factor. A man's residence is where he actually dwells and must be a fixed and permanent abode. *Fink* v. *Katz* (D.C. Mun. App. 1949, 68 A. 2d 813).

10. Evidence of indebtedness

In proceeding wherein company which had installed rink in hotel, at request of non-resident entertainers engaged by hotel, garnished hotel to attach sums allegedly due entertainers so as to acquire jurisdiction of them to recover for services in installing rink, and wherein hotel disclaimed that it was indebted to entertainers on date of service of garnishment though it later made payments to them, evidence on whether it was so indebted sustained trial court's ruling against it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

11. Executors and administrators

"Neither executors nor administrators are named in the section as subject to attachment, and as the attachment of the property of an estate is obviously inconsistent with the law of administration, nothing less, we think, than express authorization would warrant." *Jordan* v. *Landram* (35 App. D.C. 89).

12. Foreign corporation

Corporation, which had an office in the District of Columbia, was subject in the District of Columbia to garnishment of credits in its hands belonging to an employee, who was a resident of Maryland, who performed

his work in Maryland, and whose wages were payable in Maryland. *Marvins Credit, Inc.* v. *General Motors Corp.* (D.C. Mun. App. 1956), 119 A. 2d 447).

A foreign corporation, notwithstanding its exclusive engagement in business in the District, its organization for that purpose only, and the continuous presence of its secretary and treasurer therein, is a nonresident and subject to attachment as such. *Barbour* v. *Paige Hotel Co.* (2 App. D.C. 174).

13. Interest in trust

In suit by divorced wife of trust beneficiary to establish interest in trust fund, wife could not recover fund due as alimony or for the benefit of creditors, in absence of personal service on beneficiary or an attachment of his equitable interest in fund after execution of bond. *Buchanan* v. *National Sav. & Trust Co.* (1945, 146 F. 2d 13, 79 U.S. App. D.C. 278).

14. Jurisdiction

In a garnishment proceeding in the District of Columbia, it is the person of the garnishee and not the res which confers jurisdiction, and when garnishment is served suit becomes suit in personam and judgment against garnishee becomes personal judgment against him. *Western Urn Manufacturing Co.* v. *American Pipe and Steel Corporation* (C.A.D.C. 1960, 284 F. 2d 279).

When debtor leaves city taking all cash with him and leaves no information as to where he is going or when he will return, a creditor after making unsuccessful attempts to locate him is justified in assuming that he left for the purpose of evading the process and a writ of attachment will lie. *Wilkins & Co.* v. *Hillman* (8 App. D.C. 469).

The question of the jurisdiction of the court to issue the attachment must be decided solely upon the sufficiency of the declaration, regardless of defenses available to defendant since these are waived by its motion to dissolve the attachment. *Orenstein & Koppel, Aktiengesellschaft* v. *Koppel Industrial Car Equipment Co.* (1930, 38 F. 2d 532, 59 App. D.C. 221, certiorari dismissed 51 S. Ct. 106, 282 U.S. 906, 75 L. Ed. 798).

15. Member of Congress

A member of Congress, present in the District to attend its sessions, is to be regarded (in the absence of a plain, unequivocal statement to the contrary) as a resident of the state which he represents, and therefore a nonresident of the District within the meaning of the attachment statute. *Howard* v. *Citizens' Bank & Trust Co.* (12 App. D.C. 222).

16. Nonresident

Were nonresident corporations brought action in District of Columbia against nonresident corporation and filed bond, writ of attachment was directed to defendant's attorney to whom funds of defendant were paid as shown by return of bank, and personal service upon attorney was had in District of Columbia, if attorney had possession of assets of defendant, he was properly subject to service of writ and action became one in personam against attorney, but if he did not possess defendant's assets, he was not properly subject to service of writ. *Western Urn Manufacturing Co.* v. *American Pipe and Steel Corporation* (C.A.D.C. 1960, 284 F. 2d 279).

For purposes of attachment before judgment on ground that defendant is a nonresident, residence is the test, and the fact that a defendant had an established office in the District of Columbia and presumably was available for personal services was not material. *National Brick & Supply Co.* v. *Bradshaw* (D.C. Mun. App. 1952, 91 A. 2d 833).

Under this section providing that in action for recovery of debt, clerk shall issue writ of attachment if plaintiff files affidavit stating that defendant is not a resident of the District of Columbia, plaintiff who was nonresident of the District was entitled to implement his suit by writ of attachment before judgment. *Rice* v. *Salnier* (D.C. Mun. App. 1952, 86 A. 2d 175).

"Nonresident", as used in this section, must be taken in its ordinary and usual signification. *D'Elia & Marks Co.* v. *Lyon* (1943, 31 A. 2d 647).

Whether defendant was subject to attachment as a nonresident would be determined as of time of issuing and serving writ of attachment. *Id.*

That defendant had an established office in the District of Columbia and presumably was available for personal service was not material in determining whether he was a "nonresident" within this section. *Id.*

Evidence that physician with office in District of Columbia boarded up his Maryland home and, with his family, moved to expensive apartment in the District of Columbia under one-year lease, intending to move back to Maryland when he could afford it, authorized quashing of attachment of physician's property on ground that physician was not a "nonresident" of the District of Columbia. *Id.*

Where nonresident taxicab operator's taxicab driver was lured into the District of Columbia in order that taxicab might be attached there the court would in order to protect its process quash the attachment and direct return of cash deposit which was made in lieu of bond to perform judgment of the court. *Guardian Management Corp.* v. *Huffman* (D.C. Mun. App. 1948, 61 A. 2d 472).

That defendant as a common carrier regularly sent its taxicabs into the District of Columbia would not change the effect of procuring the presence of defendant's taxicab in the District by misrepresentation in order that the taxicab might be attached. *Id.*

17. Previous decisions, effect of

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have trial of issue as to such alleged preferences at present trial. *Troshinsky* v. *Feldman* (D.C. Mun. App. 1951, 81 A. 2d 91).

18. Property attached

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman* v. *Richardson* (1921, 273 F. 752, 51 App. D.C. 24).

Under this and following sections credits may be attached as well as chattels. *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

19. Quashing writ of attachment

Court did not abuse its discretion in denying motion to quash order of condemnation of funds attached and to set aside default judgment, where defendant had filed no responsive pleadings after its motions to strike complaint and to quash attachment were denied and after unsuccessful negotiations to reach a settlement. *Union Storage Company, Inc.* v. *Maury Young et al.* (D.C. Mun. App. 1962, 183 A. 2d 760).

Defendant who, in traversing attachment before judgment obtained on the ground of nonresidency, admitted that his home was in Maryland and denied that he owed the amount claimed and averred that statements in the plaintiff's affidavit for attachment were not true, traversed only main issue in complaint and was not entitled to have attachment quashed. *National Brick & Supply Co., Inc.* v. *Bradshaw* (D.C. Mun. App. 1952, 91 A. 2d 838).

20. Removal of property

A mere suspicion that the defendant intends to remove his property from the District is not sufficient to justify an attachment. *McKenzie* v. *Crouse* (35 App. D.C. 291).

21. Reversion interest in trust funds

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and he possessed a vested reversion and in May, 1960, he would receive a portion of the trust assets on partial termination of the trust, divorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who has personal property

within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. *King, etc.* v. *Fay et al.* (1958, 169 F. Supp. 934).

22. Right of attachment

Fact that plaintiff may not prevail when case comes to trial does not mean he had no right of attachment before judgment. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

23. Spendthrift trust

A spendthrift trust may under some circumstances be subjected to the obligation to support a wife or child, but enforcement of such obligation requires either personal service on beneficiary or an attachment of his equitable interest in the fund after execution of bond. *Buchanan* v. *National Sav. & Trust Co.* (1945, 146 F. 2d 13, 79 U.S. App. D.C. 278).

24. Statement of damages

Attachment statute is not only meant to apply to those actions for damages for breach of contract which are precisely liquidated and ascertained. The object of the statute is to require such a statement of the damages suffered as will be informing to the defendant and enable him to prepare himself to meet the issue tendered. *Suter* v. *Lockwood Dental Co.* (45 App. D.C. 92).

25. Trial of main issue

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

26. Wrongful suing out of attachment

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

§ 16–502. Service of notice—Publication.

(a) A writ issued pursuant to section 16–501 shall require the marshal to serve a notice on the defendant, if he is found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in the court on or before the twentieth day, exclusive of Sundays and legal holidays after service of the notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had. The marshal's return shall show the fact of the service.

(b) If the defendant is returned "Not to be found," the notice shall be given by publication to the following effect, namely:

In the United States District Court (District of Columbia Court of General Sessions) for the District of Columbia.

A B, plaintiff,
versus
C D, defendant,
} Civil Action No. ———.

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this —— day of ————, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

————— ————, Judge.

(c) The order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as the court orders. (Dec. 23, 1963, 77 Stat. 544, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–302 (Mar. 3, 1901, ch. 854, § 446, 31 Stat. 1259; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In the form of notice set out in subsec. (b), a parenthetical reference to the Court of General Sessions is inserted for the purpose of completeness.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Credits 1
Legislative intent 2
Parties 3
Property in safe-deposit box 4

1. Credits

Distinction that would permit the attachment of chattels and not of credits, see *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

2. Legislative intent

One purpose of this section is to protect the rights of third parties in whose possession the property may be. *Harriman* v. *Richardson* (1921, 273 F. 752, 51 App. D.C. 24).

3. Parties

Under this and following sections, the Attorney General must be made a party in suit to compel the payment of a judgment of condemnation, where such officer has succeeded the Alien Property Custodian. *United States ex rel. Ordmann* v. *Cummings* (1936, 85 F. 2d 273, 66 App. D.C. 107).

4. Property in safe-deposit box

Property in a safe-deposit box in a trust company is subject to garnishment. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D.C. 149).

§ 16–503. Attachment for debts not due.

A creditor may maintain an action and have an attachment against his debtor's property and credits, where his debt is not yet due and payable, if the plaintiff, his agent, or attorney files in the clerk's office, at the commencement of the action, an affidavit, supported by testimony of one or more witnesses, showing the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of his property from the District with the intent or to the effect of defeating just claims against him if only the ordinary process of law is used to obtain judgment against him, and if he also complies with the condition as to filing a bond prescribed by section 16–501. The plaintiff may not have judgment before his claim becomes due. If the attachment is quashed the action shall be dismissed, but without prejudice to a future action. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–306 (Mar. 3, 1901, ch. 854, § 450, 31 Stat. 1260).

Changes are made in phraseology.

§ 16–504. Additional attachments.

Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–304 (Mar. 3, 1901, ch. 854, § 448, 31 Stat. 1259).

§ 16–505. Sufficiency of plaintiff's bond.

The defendant or any other person interested in the proceedings who is not satisfied with the sufficiency of the surety or with the amount of the penalty named in the bond filed pursuant to section 16–501, may apply to the court for an order requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court. If the plaintiff fails to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–305 (Mar. 3, 1901, ch. 854, § 449, 31 Stat. 1260).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. In general

Defendant has the right when not satisfied with the sufficiency of the surety on the bond or amount of its penalty to apply for order requiring plaintiff to give additional bond or, if the bond is defective, move to quash the writ. *Moses* v. *Hayes* (36 App. D.C. 194).

§ 16–506. Traversing affidavits—Quashing writ of attachment—Trial of issues.

If the defendant files affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment. When, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney, the court shall quash the writ of attachment. This issue may be tried by the court or a judge at chambers after three days' notice. The issue may be tried as well upon oral testimony as upon affidavits. If the court deems it expedient, a jury may be impaneled to try the issue. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–307 (Mar. 3, 1901, ch. 854, § 451, 31 Stat. 1260).

Changes are made in phraseology.

Cross Reference

Garnishee entitled to benefit of this section, see § 16–529.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence 1
Joinder of defendants 2
Jury trial 3
Purpose 4
Review 5
Service of process 6

1. Evidence

Evidence sustained finding that fraud relied on as basis for attachment of automobile had not been proved and that the attachment should be quashed. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

2. Joinder of defendants

A single defendant may move to quash an attachment even though he is not joined by other defendants. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

3. Jury trial

The right to trial by jury is governed by this section and not by rule of Municipal Court dealing with right to trial by jury. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

Where defendant filed an affidavit traversing plaintiff's affidavit on which writ of attachment was issued and request for jury trial was made on a Saturday, and judge offered to set motion for jury trial on the following Monday, and plaintiff's counsel said he could not be ready until the following Wednesday or Thursday, whereupon the judge ordered the hearing to proceed without a jury, there was no improper exercise of discretion. *Id.*

4. Purpose

The purpose of the traverse of an attachment before judgment is to present to the court for determination the issue of whether the facts set forth in the plaintiff's affidavit as ground for issuing the attachment are true, and whether there is just ground for issuing the attachment. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

5. Review

The credibility of witnesses and the weight to be given to their testimony could not be determined on appeal from order of Municipal Court quashing writ of attachment. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

6. Service of processs

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularlity was curved by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance", and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

16–507. Property subject to attachment—Liens—Priorities.

(a) An attachment may be levied on the lands and tenements, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether the defendant's title to the property is legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business.

(b) An attachment shall be a lien on the property attached from the date of its delivery to the marshal. When different persons obtain attachments against the same defendant the priorities of the liens of the attachments shall be according to the dates when they were so delivered to the marshal. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–308 (Mar. 3, 1901, ch. 854, § 452, 31 Stat. 1260).

Property subject to attachment after judgment, see section 16–544 herein. Priority of attachments against same judgment debtor, see section 16–545 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Chattels subject to deed of trust 1
Deposits 2
Payment on account 3
Proceeds of sale 4
Rents accruing after service 5
Safe-deposit box 6
"Third person" may be plaintiff 7
Trust funds 8
Waiver of exemption 9

1. Chattels subject to deed of trust

Attachment is proper against chattels which are subject to a deed of trust as the deed of trust is in favor of the plaintiff in the suit in which the attachment is issued. *Richmond* v. *Cake* (1 App. D.C. 447).

2. Deposits

Where judgment creditor to collect judgment attached judgment debtor's deposit account, evidence sustained judgment rejecting debtor's contention that the funds attached were trust funds not subject to attachment. *Laughlin* v. *Bank of Commerce & Savings* (1943, 134 F. 2d 530, 77 U.S. App. D.C. 312).

3. Payment on account

Where judgment debtor has made a deposit with company on account of the purchase price under another contract, such funds may not be reclaimed by the judgment debtor without the seller's consent, and, being payable upon a contingency, is not subject to garnishment by the judgment creditor. *Wheeler* v. *Thomas* (31 F. Supp. 702).

4. Proceeds of sale

Proceeds of the sale of property in the hands of a purchaser from a foreign receiver who brought the property into this jurisdiciton (and was vested with title and a right to sell the same) are not subject to attachment by domestic creditor of original owner. *Jenkins* v. *Purcell* (29 App. D.C. 209, 9 L.R.A., N.S. 1074).

5. Rents accruing after service

Rents which accrued after service of the garnishment constituted a contingent liability when the garnishment was levied and was not subject to garnishment. *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

6. Safe-deposit box

Attachment may be levied against safe-deposit box. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D.C. 149).

7. "Third person" may be plaintiff

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman* v. *Richardson* (1921, 273 F. 752, 51 App. D.C. 24).

8. Trust funds

Trust funds coming into possession of Chief Probation Officer of Federal District Court in criminal cases in which defendant is placed on probation on condition of making restitution or paying maintenance are not subject to garnishment. *Manley* v. *Butterfield* (1953, 111 F. Supp. 783).

Where defendant was not placed on probation and money which he informally gave to Probation Officer was not received to make restitution to aggrieved parties for actual damages or loss caused by offenses for which he had been convicted and court who sentenced defendant made no order in respect to restitution, money was subject to garnishment. *Id.*

9. Waiver of exemption

Funds of an individual in possession of District of Columbia or its officers are not subject to attachment or garnishment in an ordinary proceeding to recover on a debt or other like claim, but exemption is allowed only for convenience of municipality and may be claimed by it alone and not by another, and the District of Columbia may waive it. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

The exemption of District of Columbia from attachment or garnishment, in an ordinary proceeding to recover on a debt or other like claim against an individual whose funds are held by the District, is waived by a failure or refusal to claim the exemption. *Id.*

§ 16–508. Attachment of real property.

An attachment is sufficiently levied on the lands and tenements of the defendant by:

(1) mentioning and describing the property in an indorsement on the attachment, made by the officer to whom it is delivered for service, to the following effect:

"Levied on the following estate of the defendant, A B, to wit: (Here describe) this —— day of ————. C D, Marshal."; and

(2) serving a copy of the attachment, with the indorsement, and the notice required by section 16–502, on the person, if any, in possession of the property.

(Dec. 23, 1963, 77 Stat. 546, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–309 (Mar. 3, 1901, ch. 854, § 453, 31 Stat. 1260).

Changes are made in phraseology.

§ 16–509. Attachment of personal property—Undertaking by defendant or person in possession.

(a) An attachment shall be levied upon personal chattels by the officer taking them into his possession and custody, unless the defendant gives the officer his undertaking to be filed in the cause, with sufficient security, substantially in the form set forth in subsection (b) of this section, or unless the person in whose possession the property is attached gives the officer his undertaking to be filed in the cause substantially in the form set forth in subsection (c) of this section. In cases where such undertakings are given, the attachment is sufficiently levied by the taking of the undertaking.

(b) An undertaking by the defendant shall contain the substance of the following form:

A B, plaintiff,
versus
C D, defendant. } Civil Action No. —.

The defendant and ———, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the ——— day of ———, anno Domini nineteen hundred ———, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, or successors or assigns, to abide by and perform the judgment of the court in the premises in relation to the property, which judgment may be rendered against any or all the parties whose names are hereto signed.

(Signed) C D.
E F.

(c) An undertaking by the person in whose possession the property is attached shall contain the substance of the following form:

A B, plaintiff,
versus
C D, defendant. } Civil Action No. —.

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as gar-

nishee, namely, (here describe) of the value of ——— dollars; and now, therefore, E F and G H, as surety, appearing in the action, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be condemned to satisfy the claim of the plaintiff, judgment may be rendered against all the undersigned for the value of the property and costs, to be executed against them, and each of them, unless the property shall be forthcoming to satisfy the judgment of condemnation.

(Signed)

E F.
G H.

The recital of the undertaking in this subsection shall contain a sufficient description of the property and its value ascertained by an appraisement to be made under direction of the officer and returned with the writ. (Dec. 23, 1963, 77 Stat. 546, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–310 (Mar. 3, 1901, ch. 854, § 454, 31 Stat. 1261; June 30, 1902, ch. 1329, 32 Stat. 530).

Changes are made in arrangement and phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality 1
Waiver 2

1. Constitutionality

This section was not unconstitutional. *United Surety Co.* v. *American Fruit Product Co.* (1915, 35 S. Ct. 828, 238 U.S. 140, 59 L. Ed. 1238).

2. Waiver

Where non-resident taxicab owner procured release of attached taxicab by cash deposit instead of giving bond as required by this section such irregularity was waived and case was required to be disposed of as if bond had been given to perform judgment of the court. *Guardian Management Corp.* v. *Huffman* (D.C. Mun. App. 1948, 61 A. 2d 472).

§ 16–510. Release of property or credits from attachment—Sufficiency of undertaking.

(a) Either the defendant or the person in whose possession the property is attached may obtain a release of the property from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him by section 16–509, with security to be approved by the court.

(b) The plaintiff may except to the sufficiency of the undertaking accepted by the marshal and, if the exceptions are sustained, the court shall require a new undertaking, with sufficient surety, by a day to be named, in default of which the marshal shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through the default.

(c) Either the defendant or the person in whose possession credits are attached may obtain a release of the credits from the attachment by filing an undertaking with security to be approved by the court. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–311 (Mar. 3, 1901, ch. 854, § 455, 31 Stat. 1261; June 30, 1902, ch. 1329, 32 Stat. 530; Apr. 19, 1920, ch. 153, 41 Stat. 564).

Section is from part of section 16–311 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16–527.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amount of recovery 1
Constitutionality 2
Duty to obtain release 3
Remedy against surety 4
Undertaking 5
As warranting release 6

1. Amount of recovery

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

2. Constitutionality

This section was not unconstitutional. *United Surety Co.* v. *American Fruit Product Co.* (1915, 35 S. Ct. 828, 238 U.S. 140, 59 L. Ed. 1238).

3. Duty to obtain release

When the plaintiff's car was taken from him, he could have procured its return immediately by giving an undertaking under this section, and it was his duty to do so and thus to reduce the defendant's liability, except if he were financially unable to do so. *Moses* v. *Lockwood* (1924, 295 F. 936, 54 App. D.C. 115, 33 A.L.R. 1467).

4. Remedy against surety

Bond given under this section to obtain release of attached property is binding upon defendant's surety notwithstanding the fact that defendant was declared bankrupt within four months thereafter. *Fidelity & Deposit Co. of Maryland* v. *Shepherd* (1926, 11 F. 2d 563, 56 App. D.C. 177).

In taking judgment solely against the main defendant, together with the subsequent step against the garnishee as outlined, defendant in error waived his right to pursue his remedy against the surety. *Fidelity & Deposit Co. of Maryland* v. *Hurley* (1934, 72 F. 2d 927, 63 App. D.C. 377).

5. Undertaking

Under this section, right to release of attachment by filing an undertaking is granted solely where the attachment is made before judgment. *Bank of Commerce & Savings* v. *Laughlin* (1941, 38 F. Supp. 755).

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, and asked court to release attachment, the request was properly denied, since this section authorizes release of attachment before judgment but not after judgment. *Laughlin* v. *Bank of Commerce & Savings* (1943, 134 F. 2d 530, 77 U.S. App. D.C. 312).

6. —— As warranting release

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, the judgment debtor was not prejudiced by court's refusal to release attachment of money, since it could make no difference to the judgment debtor whether he paid the amount out of the attached funds or out of the security which he tendered with his undertaking. *Laughlin* v. *Bank of Commerce & Savings* (1943, 134 F. 2d 530, 77 U.S. App. D.C. 312).

§ 16–511. Attachment of credits or partnership interest—Retention of property or credits by garnishee.

(a) An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized

by virtue of the attachment, besides the notice required by section 16–502. The undivided interest of the defendant in a partnership business may be levied upon by a similar service on the defendant's partner or partners.

(b) Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period, the garnishee shall incur no liability for the retention. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86–130, § 5, 73 Stat. 277).

Section is from part of section 16–312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–512 and 16–513 herein.

Similar provisions as to attachment after judgment are found in section 16–546 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Advance payments 1
Alien Property Custodian 2
Effect of service 3
Money payable upon contingency or condition 4
Personal service required 5
Property in safe-deposit box 6
Timely service of writ 7

1. Advance payments

Evidence is quite clear that employer did not make an advance payment to employee on last working day and hence this section does not apply. *American Nat. Red Cross* v. *Jameson* (1949, 178 F. 2d 717, 85 U.S. App. D.C. 390).

Under this section and § 13–103 to effect that advance payment of salary for purpose of avoiding garnishment shall be void as to attaching creditors and that all process against foreign corporations doing business in District may be served by leaving copy at corporation's principal place of business in District, wife, who had obtained decree for separate maintenance and served writ of attachment at Illinois corporation's District of Columbia office, was entitled to judgment of condemnation against corporation for a month's salary paid to husband on day of service, notwithstanding fact that husband and corporation in Illinois had entered into contract providing for payment of salary in advance to avoid garnishment and that such contracts are legal in Illinois. *Welch* v. *Welch Jr.* (1958, 166 F. Supp. 539, reconsideration denied 166 F. Supp 960).

2. Alien Property Custodian

The writ of attachment and interrogatories served upon Alien Property Custodian whose office was later abolished and whose duties descended to Attorney General were not binding upon Attorney General. *United States ex rel. Ordmann* v. *Cummings* (1936, 85 F. 2d 273, 66 App. D.C. 107).

3. Effect of service

Court cites *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D.C. 149) and says the effect of the service of the writ of garnishment was to place the property of the judgment debtor in the garnishee's hands in custodia legis. *International Finance Corp.* v. *Jawish* (1959, 271 F. 2d 985, 63 App. D.C. 262).

4. Money payable upon contingency or condition

Money payable upon a contingency or condition is not subject to garnishment until the contingency has happened or the condition has been fulfilled. *Wheeler* v. *Thomas* (31. F. Supp. 702).

5. Personal service required

Where writ of garnishment was served on garnishee's bookkeeper as agent of garnishee and personal service was not had on garnishee, entire garnishment proceeding was a nullity for want of jurisdiction, and judgment creditor had no right to press any further garnishment proceedings and subpoena directing bookkeeper to appear for oral examination and to bring with him specified employment records was properly quashed. *Hollywood Credit Clothing Co.* v. *Ben Hundley* (D.C. Mun. App. 1955, 118 A. 2d 515).

The procedures to which a garnishee is subjected under statute can only become operative and enforceable after personal service on garnishee. *Id.*

6. Property in safe-deposit box

"Property of a defendant in a safe-deposit box of a trust company is either in the possession of the defendant or in the possession of the trust company. If it is in the possession of the defendant, under the code, it appears liable to attachment and execution. If it is in the possession of the trust company, such company may be garnisheed therefor, as in possession of personal property of the defendant capable of being seized and sold on execution." *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D.C. 149).

7. Timely service of writ

Where employer entered into Illinois contract with employee for payment of employee's salary in advance for purpose of avoiding attachment by wife, who had obtained decree for separate maintenance, subsequently, in July, 1956, a writ of attachment had been served on employer which had answered that it had no funds, employer, in action by wife for judgment of condemnation with respect to salary payment to husband in June 1958, was not entitled to defense that writ of attachment was not served in time. *Welch* v. *Welch Jr.* (1958, 166 F. Supp. 539, reconsideration denied 166 F. Supp. 960).

In action by wife for judgment of condemnation against husband's employer based on writ of attachment served on employer on same day that employer paid to husband a month's salary in advance, evidence established that with due diligence, had employer wished to comply with writ of attachment, it could have answered writ for sum in question. *Id.*

§ 16–512. Attachment and levy upon wages of nonresident.

An attachment issued under section 16–501 solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 16–571 shall be subject to the provisions of subchapter III of this chapter; except that the employer-garnishee shall pay over the wages withheld pursuant to that subchapter only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of that subchapter to any such attachment, the term "judgment debtor", as used therein, means the defendant in the case in which the attachment is issued; and the term "judgment creditor", as used therein, means the plaintiff in such case. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–312 (Mar. 3, 1901, ch. 854 § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86–130, § 5, 73 Stat. 277).

Section is from part of section 16–312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–511 and 16–513 herein.

Changes are made in phraseology.

§ 16–513. Advance payment of wages to avoid attachment or garnishment.

It is unlawful for an employer to pay salary or earnings to an employee in advance of the time they

are due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of the employee, and such an advance payment, as to the attaching creditor, is void.

After the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when the salary or earnings are due and payable made within a period of six months after the date of service of the writ or before the earlier satisfaction of the judgment, whichever is the earlier, is as to such attaching creditor presumed to be in violation of this section and casts upon the employer the burden of proving that the advance payment or payments were not for the purpose of avoiding the attachment of the salary or earnings. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a) 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86–130, § 5, 73 Stat. 277).

Section is from part of section 16–312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–511 and 16–512 herein.

Changes are made in phraseology.

§ 16–514. Credits or property held for two or more persons or in representative capacity.

When a writ of attachment is served on a garnishee, and the garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, or holds a credit or property for a person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary, the credit or property is not subject to withdrawal by any person, but shall be held by the garnishee until the attachment is dismissed or otherwise disposed of by the court. If the credit or property is condemned, payment or delivery thereof as ordered by the court is a complete discharge of the garnishee from all liability to any person in respect of the credit or property. The provisions of this section do not apply to a credit or property of a partnership. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–333 (May 15, 1928, ch. 568, § 3, 45 Stat. 534).

Changes are made in phraseology.

§ 16–515. Attachment of judgments and money or property in hands of marshal.

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that directed by section 16–511 upon the debtor owing the debts. Execution may issue for the enforcement of the judgment or decree, notwithstanding the attachment, but the money collected upon the execution shall be paid into court to abide the event of the proceedings in attachment and applied as the court directs.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed. § 16–313 (Mar. 3, 1901 ch. 854, § 457, 31 Stat. 1262; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is from part of section 16–313 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16–516.

Similar provisions as to attachment after judgment are found in section 16–548 herein.

In first sentence of subsec. (b), words "or coroner", which followed "marshal", are omitted as obsolete.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Agent, attachment against 1
Judgment rendered in another court 2

1. Agent, attachment against

Attachment of money or property in the hands of an agent or custodian of an executor. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

2. Judgment rendered in another court

Money judgment secured by dry dock company against the United States Shipping Board could not be attached by another corporation which held a money judgment against the dry dock company, because the debt was evidence by a judgment rendered in another court. *United States Shipping Board Merchant Fleet Corp.* v. *Hirsch Lbr. Co.* (1930, 35 F. 2d 1010, 59 App. D.C. 116).

§ 16–516. Attachment of money or property in hands of executor or administrator.

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 16–313 (Mar. 3, 1901, ch. 854, § 457, 31 Stat. 1262; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is from part of section 16–313 of D.C. Code, 1961 ed. For remainder of such section, see tables.

Similar provisions as to attachment after judgment are found in section 16–549 herein.

Changes are made in phraseology.

§ 16–517. Attachment of other property in replevin action.

Where the action is to replevy specific personal property and it has not been replevied, other property may be attached in the action to recover damages and costs, and if a judgment is rendered for damages and costs, it shall carry the same rights as other judgments. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–321 (Mar. 3, 1901, ch. 854 § 465, 31 Stat. 1263).

Words "and if a judgment is rendered for damages and costs, it shall carry the same rights as other judgments" are substituted for "and if the same be adjudged, the

proceedings shall be the same as herein provided in other cases of money claims" for the purpose of clarification.

Changes are made in phraseology.

§ 16–518. Preservation of property—Sale—Receiver.

The court may make all orders necessary for the preservation of the property attached during the pendency of the action. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

When it seems expedient, the court may appoint a receiver to take possession of the property. The receiver shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–314 (Mar. 3, 1901, ch. 854, § 458, 31 Stat. 1262).

Phrase "the practice in equity" is changed to "the practice in civil actions" pursuant to rule 2 of the Federal Rules of Civil Procedure.

Similar provisions as to attachment after judgment are found in section 16–550 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Restraining sale

This section quoted in full and applied in suit to restrain sale of property to satisfy original trust thereon. *Jackson* v. *Finance Corp. of Washington* (1930, 41 F. 2d 103, 59 App. D.C. 309, certiorari denied 51 S. Ct. 29, 282 U.S. 851, 75 L. Ed. 754).

§ 16–519. Defenses by garnishee.

A garnishee in an attachment proceeding may make any defense available to the defendant in the action in which the garnishment is issued. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–315 (Mar. 3, 1901, ch. 854, § 459, 31 Stat. 1262).

Changes are made in phraseology.

§ 16–520. Defending against the attachment—Trial of Issues.

A defendant, any garnishee, party to a forthcoming undertaking, or an officer who might be adjudged liable to the plaintiff by reason of the undertaking being adjudged insufficient, or a stranger to the action who may make claim to the property attached, may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–316 (Mar. 3, 1901, ch. 854 § 460, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16–551 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attaching creditors right to hearing 1
Constitutionality 2
Judgment of condemnation 3

1. Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith* v. *Anderson* (D.C. Mun. App. 1954, 107 A. 2d 126).

2. Constitutionality

Sections 16–310, 16–311, providing that surety submits to the jurisdiction of the court, and to a joint judgment, do not deprive surety of property without due process of law. *United Surety Co.* v. *American Fruit Product Co.* (1915, 35 S. Ct. 828, 238 U.S. 140, 59 L. Ed. 1238).

3. Judgment of condemnation

Where creditor of debtor selling his business to garnishee attached money in the garnishee's hands representing part of the purchase price and other creditors subsequently made garnishee a party to action against debtor, evidence justified judgment of condemnation against the garnishee. *Anderson* v. *Smith* (D.C. Mun. App. 1958, 137 A. 2d 715).

§ 16–521. Interrogatories to garnishee—Oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment, or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers under oath to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–303 (Mar 3, 1901, ch. 854, § 447, 31 Stat. 1259).

Section 16–552 herein, which formerly contained provisions similar to this section applicable to attachment after judgment, was amended in 1954 to provide that the garnishee's answers should be verified by a written declaration that they are made under the penalties of perjury; but no change was made in this section which requires answers under oath. Whether or not it is desirable to have different forms of verification of the garnishee's answers, depending upon whether the attachment is before or after judgment, is a question beyond the scope of this revision. See note under section 16–501 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Answer by corporation 1
Failure to answer in time 2
Notice 3
Oral examination 4
Safe-deposit box 5

1. Answer by corporation

Quaere: Where a corporation garnishee may answer per alium through an agent or must answer per se, through its officers. Particularly when no effort was made to examine deponent orally as to the scope of his authority. *International Seal Co.* v. *Beyer* (33 App. D.C. 172). Compare *Moses* v. *Hayes* (36 App. D.C. 194), as to authority of agent to execute bond.

An affidavit signed by the president, secretary, or other proper officer of a corporation is prima facie to be considered the act of the corporation. *Id.*

A corporation garnishee may make answer, subscribed and sworn to by a representative of the corporation as "associate counsel." *Mutual Ben. Life Ins. Co. of Newark, N.J.* v. *Flynn* (1931, 48 F. 2d 1020, 60 App. D.C. 108).

2. Failure to answer in time

Upon failure of garnishee to answer within time limit adverse party must apply to enforce such default. A failure to do so is a tacit consent to an extension of time within which the answer may be filed. *Banville* v. *Sullivan* (11 App. D.C. 23).

It is not necessary to secure leave of court to file the answer after expiration of time limit, when no steps have been taken to enforce default. *Id.*

Limitation is not for the benefit of the pleader, but for his opponent, and, if the opponent fails to take advantage of the default, failure to plead in time will be deemed waived. *Shannon & Luchs Constrn. Co.* v. *Reichelderfer* (1932, 57 F. 2d 402, 61 App. D.C. 36).

3. Notice

When the garnishment is served on the garnishee, the suit becomes a suit in personam against the garnishee and he is entitled to notice. *United States ex rel. Ordmann* v. *Cummings* (1936, 85 F. 2d 273, 66 App. D.C. 107).

4. Oral examination

This section permits of an oral examination of the garnishee as broad as the one in writing and can be invoked although garnishee has not admitted in his written answers that in fact he has property or credits of the defendant in his hands. *Fidelity Sav. Co.* v. *Security Sav. & Commercial Bank* (1925, 3 F. 2d 351, 55 App. D.C. 180).

A traverse of the answer is not a condition precedent to the exercise of the right to require oral examination. *Flynn* v. *Potomac Elec. Power Co.* (1931, 47 F. 2d 978, 60 App. D.C. 82).

5. Safe-deposit box

Trust company must answer interrogatory as to whether or not defendant has a safe-deposit box. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D.C. 149).

§ 16–522. Traverse of garnishee's answers—Trial of issue—Costs and attorney's fee.

If any garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's claim, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16–520. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–317 (Mar. 3, 1901, ch. 854, § 461, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16–553 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attaching creditors right to hearing 1
Attorney's fee 2
Judgment of condemnation 3
Previous decisions, effect of 4
Procedure for interrogatories 5
Time for return 6
Traverse not necessary for oral examination 7

1. Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith* v. *Anderson* (D.C. Mun. App. 1954, 107 A. 2d 126).

2. Attorney's fee

This section providing that in all cases where judgment shall be entered for garnishee, plaintiff shall be adjudged to pay to garnishee, in addition to taxed costs, a reasonable counsel fee, is not limited to services of counsel rendered in trial court but includes services rendered in appellate court, but allowance for such services should be made by trial court. *Lincoln Loan Service* v. *Motor Credit Co.* (D.C. Mun. App. 1951, 83 A. 2d 332).

3. Judgment of condemnation

Where creditor of debtor selling his business to garnishee attached money in the garnishee's hands representing part of the purchase price and other creditors subsequently made garnishee a party to action against debtor, evidence justified judgment of condemnation against the garnishee. *Anderson* v. *Smith* (D.C. Mun. App. 1958, 137 A. 2d 715).

4. Previous decisions, effect of

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have trial of issue as to such alleged preferences at present trial. *Troshinsky* v. *Feldman* (D.C. Mun. App. 1951, 81 A. 2d 91).

5. Procedure for interrogatories

The procedure permitted by section 16–303 is not limited or modified by this section. *Fidelity Sav. Co.* v. *Security Sav. & Commercial Bank* (1925, 3 F. 2d 35, 55 App. D.C. 180).

6. Time for return

"In the absence of a statutory limitation, an attachment return must be made within a reasonable time, or it will be held to be discontinued." *Simpson* v. *Minnix* (30 App. D.C. 582).

Where attachment had been outstanding for 11 years, and no issue joined on garnishee's return, it will be deemed abandoned and the action discontinued, and a scire facias may issue to revive the judgment. *Id.*

7. Traverse not necessary for oral examination

Court cites *Fidelty Sav. Co.* v. *Security Sav. & Commerical Bank* (55 App. D.C. 180, 3 Fed. (2d) 351), and says it was not necessary for the plaintiff to traverse the answer of the garnishee, in order to exercise the right of examining the garnishee orally under oath. *Flynn* v. *Potomac Elec. Power Co.* (1931, 47 F. 2d 978, 60 App. D.C. 82).

§ 16–523. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment. The court, without other pleading, shall try the issues raised by the claim, with a jury if either party so requests, and make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–318 (Mar. 3, 1901, ch. 854, § 462, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16–554 herein.

Reference to "motion and affidavit in the cause" is substituted for "petition in the cause, under oath", to conform more nearly with modern practice. The use of petitions is now rare and archaic.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Agency 1
Oral agreements 2
Recovery after "final disposition" 3

1. Agency

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and, under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, it was within province of trial judge to find that tenant was not the agent of the agent of the mortgagee in having furniture and furnishings sold. *Thurm* v. *Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

2. Oral agreements

Where landlord brough suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and, under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm* v. *Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

3. Recovery after "final disposition"

In a replevin action against the United States marshal to recover goods seized under writ of attachment, a plea that the plaintiff should have proceeded under this section comes too late when made after close of plaintiff's case. *Splain* v. *B. F. Goodrich Rubber Co.* (1923, 290 F. 275, 53 App. D.C. 300).

§ 16–524. Judgment generally—Condemnation of attached property.

(a) If the defendant in the action has been served with process, final judgment may not be rendered against the garnishee until the action against the defendant is determined.

(b) If in such an action judgment is rendered for the defendant, the garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require.

(c) If in such an action judgment is rendered in favor of the plaintiff against the defendant, and it appears that the plaintiff is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as is directed by sections 16–525 to 16–527. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 16–319, 16–320 (Mar. 3, 1901, ch. 854, §§ 463, 464, 31 Stat. 1263).

Section consolidates sections 16–319 and 16–320 of D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amendment of garnishment 1
Application for judgment against garnishee 2
Evidence of indebtedness 3
Garnishment is suit in personam 4
Judgment 5
Prior determination against debtor 6
Release of assets 7
Trading with the enemy 8

1. Amendment of garnishment

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun App. 1957, 134 A. 2d 322).

2. Application for judgment against garnishee

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of this section forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, A. 2d 322).

3. Evidence of indebtedness

In proceeding wherein company which had installed rink in hotel, at request of non-resident entertainers engaged by hotel, garnished hotel to attach sums allegedly due entertainers so as to acquire jurisdiction of them to recover for services in installing rink, and wherein hotel disclaimed that it was indebted to entertainers on date of service of garnishment though it later made payments to them, evidence on whether it was so indebted sustained trial court's ruling against it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

4. Garnishment is suit in personam

In garnishment proceeding, it is person of garnishee, not res, which confers jurisdiction, and when garnishment is served, suit becomes suit in personam against garnishee, and in absence of such personal jurisdiction, a judgment against garnishee is a nullity. *Hollywood Credit Clothing Co.* v. *Hundley* (D.C. Mun. App. 1955, 118 A. 2d 515).

5. Judgment

Where no judgment has been rendered against defendant a judgment by default against garnishee is void. *James E. Colliflower & Co.* v. *McCallum-Sauber Co.* (1933, 63 F. 2d 366, 61 App. D.C. 390).

6. Prior determination against debtor

Judgment should not be entered against garnishee until action against principal debtor is determined. *Marvins Credit, Inc* v. *General Motors Corp.* (D.C. Mun. App. 1956, 119 A. 2d 447).

7. Release of assets

Judgment of condemnation before ultimate determination of all claims in case has been had does not, in all circumsances, operate to permit garnishee, without risk of liability, to release balance of assets garnished, and matter depends on determination as to which of the parties, plaintiff or garnishee, was at fault in permitting situation to develop. *J. M. Zamoiski Co.* v. *Discount Sales Co.* (1960, 187 F. Supp. 663).

Where garnishee, before it was called on to pay out any attached money, received letter from plaintiff's counsel stating that plaintiff had moved for summary judgment in certain amount, and that such sum would be condemned as soon as judgment was entered, and that it would be necessary for garnishee to hold balance of attached funds until determination of case, and thereafter partial judgment and judgment of condemnation had thereon both recited that the judgment was a partial judgment, and garnishee inadvertently released balance of attached funds before final judgment was entered for plaintiff, plaintiff was entitled to satisfaction of the final judgment by condemnation. *Id.*

8. Trading with the enemy

Section 30 of the Trading with the Enemy Act, 50 Appendix, U.S. Code § 30, providing that money or property in the hands of the Alien Property Custodian should be subject to attachment in accordance with the provisions of the Code of the District of Columbia, was construed to authorize a decree of condemnation against such money

or property, notwithstanding the further provision in section 30 that "nothing in this section shall be construed as authorizing the taking of actual possession, by any officer of the court, of any money or other property held by the Alien Property Custodian or by the Treasurer of the United States." *Sutherland* v. *Kreisch* (1930, 41 F. 2d 974, 59 App. D.C. 351).

§ 16–525. Condemnation and sale of property—Proceeds of sale under interlocutory order.

In any form of action, where specific property has been attached and remains under the control of the court, judgment of condemnation of the property shall be entered, and as much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri-facias. If the property was sold under interlocutory order of the court, the proceeds, or as much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–322 (Mar. 3, 1901, ch. 854, § 466, 31 Stat. 1263; June 30, 1902, ch. 1329, 32 Stat. 530.)

Similar provisions as to attachment after judgment are found in section 16–555 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. May disregard attached property

Where there are two judgments, one a personal judgment and the other one of condemnation, "it would be unreasonable to hold that the plaintiff must look for his satisfaction to the latter alone. He is entitled to realize his personal judgment out of any property of the judgment debtor which he finds available for the purpose; and he may wholly disregard the attached property, if he so desires." *Adriance, Platt & Co.* v. *Heiskell* (8 App. D.C. 240).

§ 16–526. Judgment against garnishee.

(a) When a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution may be had thereon. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–323 (Mar. 3, 1901, ch. 854, § 467, 31 Stat. 1263).

Similar provisions as to attachment after judgment are found in section 16–556 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attaching creditors right to hearing 1
Attorney's fee 2
Failure to appear and show cause 3
Motion to vacate 4
Rents accruing after service not credits 5
Review 6

1. Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under section 28–1701 et seq. *Smith* v. *Anderson* (D.C. Mun. App. 1954, 107 A. 126).

2. Attorney's fee

In garnishment proceedings, where trial court had question whether an attorney's fee should be allowed garnishee before it, in a motion to amend its judgment to provide therefor, but before reaching a decision thereon an appeal was noted, after mandate is received by the trial court, counsel for appellant may renew his request for such fee under the statute. *Anderson* v. *Smith* (D.C. Mun. App. 1957, 137 A. 2d 715).

3. Failure to appear and show cause

The lower court was without power to enter judgment against the garnishee unless it failed to appear and show cause, or to answer. *Mutual Ben. Life Ins. Co. of Newark, N.J.* v. *Flynn* (1931, 48 F. 2d 1020, 60 App. D.C. 108).

4. Motion to vacate

Motion to vacate default judgment against garnishee was addressed to discretion of trial court. *Ray* v. *Bruce* (1943, 31 A. 2d 693).

In considering merits of garnishee's motion to vacate default judgment, garnishee's conduct is for court's consideration in determining whether delay in answering writ was due to inadvertence or indifference. *Id.*

Where motion to vacate default judgment against garnishee was based on grounds of misunderstanding that garnishee was required to answer garnishment in ten days after service, and advice of counsel that garnishment did not have to be answered until trial of another suit, but neither motion nor its amendment was verified or accompanied by affidavit and record did not disclose that evidence was offered to support the allegations, denial of motion was not an abuse of discretion. *Id.*

5. Rents accruing after service not credits

Rents not accrued before service of garnishment are not credits but merely contingent liabilities. *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

6. Review

Appellate court cannot reverse trial court's denial of garnishee's motion to vacate default judgment against garnishee unless denial of motion was an abuse of discretion. *Ray* v. *Bruce* (1943, 31 A. 2d 693).

Order denying motion, filed within term at which judgment was entered, to vacate default judgment against garnishee, is not an "appealable order". *Id.*

§ 16–527. Judgment in case of undertaking for retention of property or credits.

(a) When property or credits attached are released upon an undertaking given as provided by sections 16–509 and 16–510, and judgment in the action is rendered in favor of the plaintiff, it is a joint judgment against both the defendant and all persons in the undertaking for the appraised value of the property or the amount of the credits.

(b) When the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided by section 16–509, judgment of condemnation of the property shall be rendered as provided by section 16–525, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of the property, not exceeding the plaintiff's claim, the judgment to be entered satisfied if the property is forthcoming and delivered to the marshal, undiminished in value, within ten days after the judgment; otherwise, execution thereon may be

had against the garnishee and his surety or sureties; and if the property is so delivered to the marshal the same shall be sold by him under fieri facias to satisfy the judgment of condemnation. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–311, 16–324 (Mar. 3, 1901, ch. 854, §§ 455, 468, 31 Stat. 1261, 1263; June 30, 1902, ch. 1329, 32 Stat. 530; Apr. 19, 1920, ch. 153, 41 Stat. 564).

Section consolidates part of section 16–311 of D.C. Code, 1961 ed., with section 16–324 of such Code. The remainder of section 16–311 is set out in section 16–510 herein.

Changes are made in phraseology.

§ 16–528. Judgment protects garnishee.

A judgment of condemnation against a garnishee, and execution thereon, or payment by the garnishee in obedience to the judgment or an order of the court, is a sufficient defense to any action brought against him by the defendant in the action in which the attachment is issued, for or concerning the property or credits so condemned. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–325 (Mar. 3, 1901, ch. 854, § 469, 31 Stat. 1263).

Changes are made in phraseology.

§ 16–529. Attachment in actions for fraudulent conveyances.

(a) Where the ground upon which an attachment is applied for is that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee.

(b) The garnishee may have the same benefit of section 16–506 as the defendant in the action. If the court is of the opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been levied on the property claimed by the garnishee, the attachment may be quashed as to the garnishee and the levy set aside.

(c) If the levy is not set aside, the garnishee may answer that he was a bona fide purchaser from the defendant for value without notice of any fraud on the part of the defendant, and the answer shall be held to make an issue, without any further pleading in reply thereto; and issue may be tried as directed by section 16–520.

(d) When the issue is found in favor of the garnishee, judgment shall be rendered in his favor for his costs and a reasonable attorney fee. When the issue is found against the garnishee, but judgment in the action is rendered in favor of the defendant, the attachment shall be dissolved, and garnishee shall recover his costs.

(e) When the issue is found against the garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, and when it appears upon the verdict of a jury that the claim of the plaintiff against the defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed by section 16–524(c). (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–326 to 16–330 (Mar. 3, 1901, ch. 854, §§ 470 to 474, 31 Stat. 1264).

Section consolidates sections 16–326 to 16–330 of D.C. Code, 1961 ed.

Changes are made in phraseology.

CROSS REFERENCE

Fraudulent conveyances, see Title 28, ch. 31.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality 2
Counsel fee not allowed 3
Counsel fees 4
Disclosure of safe-deposit box 5
In general 1
Issue made 6
Presumption of intent 7
"Reasonable counsel fee" 8

1. In general

This section provides that if the levy shall not be set aside, the garnishee may plead that he was a bona fide purchaser without notice of any fraud on the part of the defendant, and said plea shall make an issue to be tried by the court or by the jury if either party desires it. *Morimura* v. *Samaha* (25 App. D.C. 189).

2. Constitutionality

This provision is constitutional. *Morimura* v. *Samaha* (25 App. D.C. 189).

3. Counsel fee not allowed

Attorney's fee not allowed when issue found against garnishee. *Morimura* v. *Samaha* (25 App. D.C. 189).

Garnishee was not entitled to award of counsel fee for successfully opposing judgment creditor's motion for judgment. *Hollywood Credit Clothing Co., Inc.* v. *Autoscope, Inc.* (D.C. App. 1963, 193 A. 2d 733).

4. Counsel fees

Where there is no finding by the court in favor of the garnishee upon the issue made between him and the plaintiff, and by agreement sale was made and distributed, garnishee is not entitled to counsel fee. *Russell* v. *Moderns Restaurant* (1936, 80 F. 2d 533, 65 App. D.C. 90).

5. Disclosure of safe-deposit box

Upon an allegation that defendant has made a fraudulent assignment to his wife and son to defraud his creditors, a garnishee may be compelled to disclose whether the wife or son has rented a safe-deposit box from it. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D.C. 149).

6. Issue made

An issue may be made between the attaching creditor and the garnishee as to whether the attachment should have been issued and levied on the property. *Russell* v. *Moderns Restaurant* (1936, 80 F. 2d 533, 65 App. D.C. 90).

7. Presumption of intent

"Where an instrument contains provisions, the necessary legal effect of which is to work a fraud upon creditors, the assignor is conclusively presumed to have intended the reasonable consequences of his own act," and the property in his hands is subject to attachment. *Cissell* v. *Johnston* (4 App. D.C. 335).

8. "Reasonable counsel fee"

What is a reasonable fee in a particular case is within the discretion of the court. *Morimura* v. *Samaha* (25 App. D.C. 189).

§ 16–530. Time for trial of issues.

All issues raised by answers to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as may be just. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–331 (Mar. 3, 1901, ch. 854, § 475, 31 Stat. 1264).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Trial of main issue

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 883).

§ 16–531. Attachment dockets—Index of attachments.

The clerk of the court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon. The attachments shall be indexed in the names of the defendant and of any person in whose possession the estate may have been levied upon. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–334 (Mar. 3, 1901, ch. 854, § 477, 31 Stat. 1264).

Changes are made in phraseology.

§ 16–532. Other remedies of judgment creditor.

Nothing herein contained deprives a judgment creditor of the right to file a civil action to enforce his judgment against an equitable interest in real or personal estate of the judgment defendant, or to have a conveyance of the real or personal estate by the defendant, made with intent to hinder, delay, and defraud his creditors, set aside. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–332 (Mar. 3, 1901, ch. 854, § 476, 31 Stat. 1264).

Reference to "a bill in equity" is changed to "a civil action" pursuant to rule 2 of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 16–533. Attachment proceedings in Court of General Sessions.

The provisions of this Code relating to attachments apply to attachment proceedings in the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1).

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–733, 11–751a, 16–335 (Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–733 and 16–335 of D.C. Code, 1961 ed., which were from the same provision of the 1921 act.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

CROSS REFERENCE

Attachment and garnishment, see § 16–501 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally 1
Attachment against executor 2

1. Generally

The provisions of this section regarding attachment and garnishment are applicable in municipal court. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

2. Attachment against executor

In action in municipal court of District of Columbia wherein writ of attachment is directed to an executor, in connection with an action against a third party who claims an interest in the estate, the interest of other persons in the estate and the exclusive jurisdiction of district court in probate proceedings are fully protected by statutory provision that, if executor is in doubt whether defendant's share of estate will prove sufficient to pay plaintiff's debt, no judgment shall be entered against the executor until passage by probate court of his final or other account showing money or property in his hands to which defendant is entitled. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

SUBCHAPTER II.—ATTACHMENT AND GARNISHMENT AFTER JUDGMENT IN AID OF EXECUTION

§ 16–541. Definition and applicability.

As used in this subchapter, "judgment" includes an unconditional decree for the payment of money, and this subchapter is applicable to such a decree. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–218 (Mar. 3, 1901, ch. 854, § 1104, 31 Stat. 1362).

Section 15–218 of D.C. Code, 1961 ed., cited above, provided, as follows:

"The aforegoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment.".

In the above-quoted provisions, the parenthetical reference "(this chapter)" referred to chapter 2 of Title 15 of D.C. Code, 1961 ed., in which sections 15–218 and 15–201 to 15–217 thereof, relating to execution of judgment were set out. None of the provisions, relating to attachment and garnishment after judgment, which are carried into this subchapter (sections 15–301 to 15–312 of D.C. Code, 1961 ed.), was set out in such chapter 2. They were set out in chapter 3. However, in the original statute (Code of 1901), the provisions in both of the chapters, including section 1104 thereof, on which section 15–218 was based, were set out in one chapter (ch. 26, §§ 1074–1104, 31 Stat. 1358–1362). Therefore, it would seem that section 1104 made, not only the provisions relating to execution on judgment, but also those relating to attachment after judgment, (this subchapter), applicable to unconditional decrees ("in equity") for the payment of money. Therefore, section 15–218 of D.C. Code, 1961 ed., in addition to being carried into chapter 3 of Title 15 of this revised Part, relating to executions, is carried into this subchapter.

However, it is apparent that all the above-quoted provisions following "scire facias," related only to executions and not to attachments, and accordingly are omitted from this section. Further, the reference to revival by scire facias is omitted for the same reason stated in revision note under section 15–101 herein. Revival of judgments and decrees is now had by motion and hearing. See rules 54(a) and 81(b) of the Federal Rules of Civil Procedure, and rule 30 of the local rules of the United States District Court for the District of Columbia.

Words "in equity", which followed "unconditional decree", are omitted as obsolete, in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure. See rule 2 thereof, also rule 2 of the civil rules of the Court of General Sessions.

The remaining provisions are reworded, but without change of substance.

§ 16–542. Issuance of attachment after judgment—Costs.

An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias. If costs are unnecessarily multiplied thereby they shall be charged to the party causing the attachment to be issued. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–301 (Mar. 3, 1901, ch. 854, § 1086, 31 Stat. 1359).

For discussion as to the relationship between this subchapter and subchapter I of this chapter, see revision note under section 16–501 herein.

Changes are made in phraseology.

CROSS REFERENCES

Attachment and garnishment before judgment, see §§ 16–501 to 16–533.

Provisions for attachment and garnishment as not preventing a bill in equity to enforce a judgment against equitable interests in property, see § 16–532.

NOTES TO DECISIONS UNDER PRIOR LAW

Executors and administrators 1
Oral examination 2

1. Executors and administrators

The code provides expressly for actions and judgments against executors and administrators and for the issuance of writs of fieri facias thereon, and there is no reason to doubt that this contemplates the use of attachment and garnishment. *Fishel* v. *Kite* (1940, 101 F. 2d 685, 69 App. D.C. 360, certiorari denied 59 S. Ct. 645, 306 U.S. 656, 83 L. Ed. 1054).

2. Oral examination

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

§ 16–543. Revival of judgment unnecessary.

Attachment may be issued at any time during the life of the judgment, without issuing an order reviving the judgment previously thereto. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–302 (Mar. 3, 1901, ch. 854, § 1087, 31 Stat. 1359).

Words "an order reviving the judgment" are substituted for "scire facias" pursuant to rule 81(b) of the Federal Rules of Civil Procedure, which abolished the writ of scire facias. See, also, rule 30 of the local rules of the United States District Court for the District of Columbia.

§ 16–544. Property subject to attachment.

An attachment may be levied upon the judgment debtor's goods, chattels, and credits. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–303 (Mar. 3, 1901, ch. 854, § 1088, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541.)

Property subject to attachment generally, see section 16–507 herein.

§ 16–545. Multiple attachments against same judgment debtor.

Only one attachment upon goods, chattels, and credits of a judgment debtor may be satisfied at one time. Where more than one such attachment issued against the same judgment debtor is served on a garnishee the attachments shall be satisfied in the order in which they were served upon the garnishee. This section does not apply with respect to an attachment upon wages to which subchapter III of this chapter applies. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–304 (Mar. 3, 1901, ch. 854, § 1069, 31 Stat. 1360; Aug. 31, 1954, ch. 1166, § 1, 68 Stat. 1043; Aug. 4, 1959, Pub. L. 86–130, § 2, 73 Stat. 277).

Section is from part of section 15–304 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16.552 herein.

Changes are made in phraseology.

Priority of the liens of attachments, see section 16–507 herein.

§ 16–546. Attachments of credits.

An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–305 (Mar. 3, 1901, ch. 854, § 1090, 31 Stat. 1360; Apr. 5, 1939, ch. 37, § 8(b), 53 Stat. 567).

Section is from part of section 15–305 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–547 and 16–548 herein.

Similar provisions as to attachments generally are found in section 16–511(a) herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Personal property in hands of trust company 1
Retention by garnishee 2
Subsequent creditor 3

1. Personal property in hands of trust company

Personal property in the hands of a trust company may be garnished. *International Finance Corp.* v. *Jawish* (1934, 71 F. 2d 985, 63 App. D.C. 262).

2. Retention by garnishee

Where garnishments were dismissed and no steps were taken to preserve lien, lien was extinguished and garnishee could pay funds to owner immediately. *Mandel* v. *Lofton* (D.C. Mun. App. 1952, 89 A. 2d 880).

3. Subsequent creditor

To rule that after writ of attachment has been served on garnishee a subsequent attaching creditor might seize the property so garnished would be inconsistent with the intent and purpose of the law. *International Finance Corp.* v. *Jawish* (1934, 71 F. 2d 985, 63 App. D.C. 262).

§ 16–547. Retention of property or credits by garnishee.

Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period the garnishee shall incur no liability whatsoever for the retention. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–305 (Mar. 3, 1901, ch. 854, § 1090, 31 Stat. 1360; Apr. 5, 1939, ch. 37, § 8(b), 53 Stat. 567).

Section is from part of section 15–305 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–546 and 16–548 herein.

Similar provisions as to attachments generally are found in section 16–511(b) herein. Advance payment of wages to avoid attachment or garnishment, see section 16–513 herein. Credits or property held for two or more persons or in representative capacity, see section 16–514 herein.

Changes are made in phraseology.

§ 16–548. Attachment of judgments and money or property in hands of marshal.

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that prescribed by section 16–546 upon the debtor owing the debts.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code 1961 ed., §§ 15–305, 15–306 (Mar. 3, 1901, ch. 854, §§ 1090, 1091, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541; Apr. 5, 1939, ch. 37, § 2(b), 53 Stat. 567).

Section consolidates part of sections 15–305 and 15–306 of D.C. Code, 1961 ed. The remainder of the sections is set out in §§ 16–546, 16–547, and 16–549 herein.

Similar provisions as to attachment generally are found in section 16–515 herein.

Reference to the coroner is omitted as obsolete.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Defendant 1
Retention of seized money subject to tax lien 2

1. Defendant

The "defendant" referred to is one who has a right to money in the hands of an administrator or executor of an estate which is subject to a judgment against him. *Sanford* v. *Sanford* (1923, 286 F. 777, 52 App. D.C. 315).

2. Retention of seized money subject to tax lien

District court, in a proceeding on motion for return of property and suppression of property as evidence could, after suppressing evidence, direct that money be retained in custody subject to federal tax lien and a final disposition thereof. *Welsh* v. *United States* (1955, 220 W. 2d 200, 95 U.S. App. D.C. 93).

§ 16–549. Attachment of money or property in hands of executor or administrator.

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–306 (Mar. 3, 1901, ch. 854, § 1091, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541).

Section is from part of section 15–306 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16–548 herein.

Similar provisions as to attachment generally are found in section 16–516.

Changes are made in phraseology.

§ 16–550. Preservation of property—Sale.

The court may make all orders necessary for the preservation of the property attached. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–307 (Mar. 3, 1901, ch. 854, § 1093, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–518 herein.

Changes are made in phraseology.

§ 16–551. Defending against the attachment—Trial of issues.

A garnishee or stranger to the action who may make claim to the property attached may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact thereby made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–308 (Mar. 3, 1901, ch. 854, § 1094, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–520 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admission of ownership 1
Attorney's lien 2
Oral examination 3
Ownership of fund 4
Validity of judgment 5

1. Admission of ownership

Where answers of bank disclosed deposits in the names of appellants individually, and appellants in their affidavits in support of their motion to quash as well as in their verified pleas averred that the said deposits belonged to them, they can not complain if court takes their statements as true and condemns such deposits to satisfy a default judgment against them personally. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, 68 App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

2. Attorney's lien

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

3. Oral examination

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

4. Ownership of fund

Neither the answer of the garnishee nor the information obtained in the oral examination is conclusive upon the court in respect of the true ownership of the fund. *Young* v. *Nicholson* (1940, 107 F. 2d 177, 70 App. D.C. 351).

5. Validity of judgment

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

§ 16–552. Interrogatories to garnishee—Oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers, verified by a written declaration that the answers are made under the penalties of perjury, to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(c) Whoever willfully makes and subscribes a return, statement, or other document, pursuant to this section, that contains, or is verified by, a written declaration that it is made under the penalties of perjury, and that he does not believe to be true and correct as to every material matter, is subject to the penalties prescribed for perjury. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–304 (Mar. 3, 1901, ch. 854, § 1089, 31 Stat. 1360; Aug. 31, 1954, ch. 1166, § 1, 68 Stat. 1043).

Section is from part of section 15–304 of D.C. Code, 1961 ed. The remainder of the section is set out in section 16–545 herein.

Similar provisions as to attachment generally that were not amended to change the method of verification of answers, are found in section 16–521 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Form 2
In general 1
Judgment against garnishee 3
Judgment of condemnation 4
Oral examination 5

1. In general

Statute contemplates (1) "the garnishee answering interrogatories, (2) oral examination of the garnishee, supplementing the answers to the interrogatories, (3) traverse by plaintiff of the garnishee's answer, after the oral examination, and (4) the determination of the issue joined by traverse" and when the record shows only the first of these steps the trial court is correct in denying the motion for summary judgment. *Dickinson* v. *Brooks* (1940, 108 F. 2d 4, 71 App. D.C. 106).

When the usual written interrogatories were directed to the garnishee and she answered that she was indebted to defendant in the principal suit and that this indebtedness, in the amount of $300, had been established by stipulation filed in an equity suit between her and the defendant then pending in the District Court, and when the stipulation was filed as an exhibit and recited that the named amount was "in compromise of all the various claims and counterclaims between the parties" and if plaintiff was not satisfied with this answer, he had means of testing its accuracy and truthfulness. *Id.*

2. Form

A garnishee is not excused from answering a proper question merely because it is inaptly combined with improper queries in a single interrogatory where the proper question is clear and easily separable. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

3. Judgment against garnishee

Where garnisher had obtained a judgment of condemnation against garnishee, garnisher was not required to make a demand for payment before issuing an attachment against garnishee's bank account, and could not be liable to garnishee for wrongful attachment and malicious abuse of process for attaching bank account without first giving notice or demanding payment. *District Credit Clothing, Inc.* v. *Square Deal Trucking Company* (D.C. Mun. App. 1960, 163 A. 2d 822).

Where University which received part of its support from the United States, had the right to hire and fire any employee without consulting any branch of federal government, and salary of furniture repairmen was fixed by University, repairman was an employee of the University, and his salary was owed by the University, and thus was subject to garnishment, even though University intended to pay repairman from funds furnished by government and by a United States Treasury check. *Marvins Credit, Inc.* v. *Howard University* (D.C. Mun. App. 1953, 101 A. 2d 247).

4. Judgment of condemnation

Where traverse was not filed to garnishee's answer in Municipal Court, judgment of condemnation immediately following oral examination of garnishee was not proper, and could only be entered when credits were found upon an issue made pursuant to statute. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

5. Oral examination

The provision in this section and § 15–309 do not affect the right of the plaintiff to examine the garnishee orally under oath, without waiting for a traverse of the answer. *Flynn* v. *Potomac Elec. Power Co.* (1931, 47 F. 2d 978, 60 App. D.C. 82).

The right to oral examination supplementing the information obtained in the garnishee's answer is permitted in express statutory terms. *Young* v. *Nicholson* (1940, 107 F. 2d 177, 70 App. D.C. 351).

Where the garnishee's answer on its face shows the uncertainty as to the ownership of deposits, it is error to refuse plaintiff the right to examine the garnishee orally. *Id.*

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

The purpose of oral examination of garnishee in open court as a supplement to his answers to plaintiff's written interrogatories is to enable an attaching plaintiff to test accuracy of such answers and determine whether to challenge garnishee for formal traverse. *Seaboard Finance Co.* v. *Ruppert* (D.C. Mun. App. 1953, 100 A. 2d 454).

In garnishment proceedings against employer of plaintiff's judgment debtor, plaintiff had right to examine garnishee orally respecting his written answers to plaintiff's interrogatories, where such answers were contradictory as to garnishee's method of paying defendant's salary. *Id.*

§ 16–553. Traverse of garnishee's answers—Trial of issue—Costs and attorney's fee.

If a garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's judgment, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16–551. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 79 Stat. 554, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., 15–309 (Mar. 3, 1901, ch. 854, § 1095, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–522 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Costs 1
Counsel fees 2
Oral examination 3
Plaintiff may traverse 4

1. Costs

Where judgment creditor issued garnishment to employer of alleged judgment debtor, and alleged judgment debtor demanded trial right of property claiming that he was not same person as judgment debtor, and judgment creditor then entered a praecipe releasing attached credits alleged judgment debtor was entitled to costs. *Hunter* v. *Hollywood Credit Clothing Co., Inc.* (D.C. Mun. App. 1951, 77 A. 2d 317).

2. Counsel fees

Garnishee was not entitled to award of counsel fee for successfully opposing judgment, creditor's motion for judgment. *Hollywood Credit Clothing Co. Inc.* v. *Autoscope, Inc.* (D.C. App. 1963, 193 A. 2d 733).

Evidence supported finding that garnishee in whose favor judgment had been entered after trial on traverse to his answer had incurred obligation to pay for legal services furnished. *A. A. Peikin* v. *C. Williams* (D.C. Mun. App. 1961, 167 A. 2d 355).

Good faith in issuance of garnishment and traversing of garnishee's answer could be taken into consideration in fixing reasonable counsel fee recoverable by successful garnishee but was not absolute bar to grant of counsel fee. *Id.*

Award to garnishee, in whose favor judgment had been entered after trial on traverse to his answer, of attorney's fee in amount of $300 was not unreasonable although the attachment was for only $600. *Id.*

3. Oral examination

One does not have to file a traverse to garnishee's answer to Municipal Court before being entitled to oral examination. *Ourisman Chrevolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

The purpose of oral examination of garnishee in open court as a supplement to his answers to plaintiff's written interrogatories is to enable an attaching plaintiff to test accuracy of such answers and determine whether to challenge garnishee for formal traverse. *Seaboard Finance Co.* v. *Ruppert* (D.C. Mun. App. 1953, 100 A. 2d 454).

In garnishment proceedings against employer of plaintiff's judgment debtor, plaintiff had right to examine garnishee orally respecting his written answers to plaintiff's interrogatories, where such answers were contradictory as to garnishee's methods of paying defendant's salary. *Id.*

4. Plaintiff may traverse

The plaintiff may traverse the garnishee's answer, and the issue thereby made may be tried before the court or by a jury if either party so desire. *Young* v. *Nicholson* (1940, 107 F. 2d 177, 70 App. D.C. 351).

If plaintiff is not satisfied with answer to written interrogatories, he has means of testing its accuracy and truthfulness. *Dickinson* v. *Brooks* (1940, 108 F. 2d 4, 71 App. D.C. 106).

§ 16–554. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same. The court, without other pleadings, shall try the issues raised by the claim, with a jury if either party so requests, and may make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–310 (Mar. 3, 1901, ch. 854, § 1096, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–523 herein.

Reference to "motion and affidavit in the cause" is substituted for "petition in the cause, under oath,", to conform more nearly with modern practice. The use of petitions is now rare and archaic.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admission of ownership 1
Attorney's lien 2
Equitable interest 3
Evidence of notice 4
Independent proceeedings 5
Petition asserting ownership 6
Validity of judgment 7

1. Admission of ownership

Where appellants have stated in affidavits and in verified pleadings that deposits in bank belonged to them absolutely, they can not complain that the issue as to such credits was not determined as provided in this section. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, 68 App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

2. Attorney's lien

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

3. Equitable interest

Where conditional sales agreement for sale of restaurant equipment was recorded in District of Columbia, and thereafter judgment creditor of buyer issued execution and seized part of equipment, seller had right to file petition in cause in which attachment was made, asserting ownership and demanding order for return thereof. *Cutler* v. *Cooper* (D.C. Mun. App. 1953, 96 A. 2d 360).

4. Evidence of notice

On buyer's petition to recover automobile retained by vendor and which was attached by vendor's judgment creditor before recording of transfer of title, evidence established that attaching marshal had no notice of transfer of title and consequently statute providing that unrecorded transfer of title was invalid as to parties not having actual knowledge of transfer when seller retained possession of goods was applicable. *Barlow* v. *Langlands* (D.C. Mun. App. 1955, 110 A. 2d 688).

5. Independent proceedings

When petition by alleged judgment debtor for trial right of attached property is filed, proceeding independent of main action is commenced with alleged judgment debtor as plaintiff and attaching party as defendant. *Hunter* v. *Hollywood Credit Clothing Co., Inc.* (D.C. Mun. App. 1951, 77 A. 2d 317).

6. Petition asserting ownership

Where conditional sales agreement for sale of restaurant equipment was recorded in District of Columbia, and thereafter judgment creditor of buyer issued execution and seized part of equipment; rule of municipal court for District of Columbia did not displace or supersede seller's long established statutory remedy of filing a petition in proceedings in which attachment had been made, asserting ownership and demanding an order for return thereof. *Cutler* v. *Cooper* (D.C. Mun. App. 1953, 96 A. 2d 360).

7. Validity of judgment

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

§ 16–555. Condemnation and sale of property—Proceeds of sale under interlocutory order.

Where the attachment has been levied upon specific property, on the return by the marshal, judgment of condemnation of the property may be entered, and as much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a fieri facias. If the property was sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–311 (Mar. 3, 1901, ch. 854, § 1097, 31 Stat. 1361).

Similar provisions as to attachment generally are found in section 16–525 herein.

Changes are made in phraseology.

CROSS REFERENCE

Other provisions concerning effect and enforcement of decrees, see §§ 15–103 to 15–105, 15–301, and 16–541.

§ 16–556. Judgment against garnishee.

(a) Subject to the provisions of subchapter III of this chapter, if a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 15–312 (Mar. 3, 1901, ch. 854, § 1098, 31 Stat. 1361; Aug. 4, 1959, Pub. L. 86–130, § 3, 73 Stat. 277).

Similar provisions as to attachment generally are found in section 16–526 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amendment of garnishment 1
Answers to interrogatories 2
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Entry of judgment 7
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1. Amendment of garnishment

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

2. Answers to interrogatories

The garnishee, wife of the judgment debtor, may not be compelled to answer interrogatories that would compel her to testify against her husband. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

Appellants having failed to make answer to the proper and separable portion of the third interrogatories within the time limited, judgment was properly entered against them. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, 68 App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

This section, providing that judgment shall be entered against garnishee if garnishee shall have failed to answer interrogatory served on him or to appear and show cause why judgment of condemnation should not be entered, is not mandatory as applied to situation where garnishee has appeared and shown several reasons why no judgment of condemnation or of recovery should be entered. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

3. Application for judgment against garnishee

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

4. Attorney's lien

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

5. Default

The lower court may not enter judgment by default against the garnishee unless it failed to appear and show cause, or to answer. *Mutual Ben. Life Inc. Co., Newark, N.J.* v. *Flynn* (1931, 48 F. 2d 1020, 60 App. D.C. 108).

6. Discretion of court

Under this section providing that if a garnishee fails to answer interrogatory served on him in connection with issuance of writ of attachment or fails to appear and show cause why a judgment of condemnation should not be entered, such judgment "shall" be entered against garnishee for whole amount of plaintiff's judgment and costs, the quoted word is not mandatory and court is not without discretion in the matter. *Pastor* v. *Republic Savings and Loan Ass'n.* (D.C. Mun. App. 1959, 153 A. 2d 813).

Municipal Court has discretionary power after entering judgment of recovery against garnishee to set it aside for good cause shown, and such power to set aside a judgment presupposes power to refuse to enter it in the first instance for good cause shown. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

In garnishment procedings, where garnishee appeared and showed several reasons why no judgment of condemnation or recovery should be entered, including garnishee's failure to understand nature of proceedings, his lack of indebtedness to judgment defendant, and right of judgment defendant to claim exemptions, there was no error in municipal court's use of judicial discretion in refusing to grant judgment of recovery against garnishee. *Id.*

7. Entry of judgment

Without valid judgment of record against principal debtor, municipal court has no right to enter judgment of recovery against garnishee. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916.)

8. Failure to answer

Where judgment creditor caused a writ of attachment to issue on judgment addressed to savings and loan association as garnishee, requiring it to answer whether it was indebted to judgment debtor and notifying association that answer was required within ten days after service and that failure to answer might result in judgment being entered against association, and writ was served on assistant secretary-treasurer, who examined account of judgment debtor and found that account had been closed out and who concluded that no action was required and therefore placed writ in a file, court did not abuse its discretion in denying judgment creditor's

motion for judgment against association for failure to answer. *Pastor* v. *Republic Savings and Loan Ass'n.* (D.C. Mun. App. 1959, 153 A. 2d 813).

9. Oral examination

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

10. Trust funds

In proceeding to enforce child support judgment against children's father's interest as beneficiary of trust, trial court could stay execution, as to that portion of trust fund not immediately due, until same became due. *Seidenberg et al.* v. *Seidenberg* (1957, 249 F. 2d 123, 101 U.S. App. D.C. 367).

11. Vacation of judgment

Where garnishee made a motion to vacate default judgment more than six months after entry of judgment, and garnishee claimed that it had mailed its answer to the garnishment to the court, and it was possible that answer had been received by court but had been inadvertently misplaced or misfiled, court, if it should find that garnishee had mailed an answer to the court, could, in its discretion, vacate the default judgment against the garnishee, but was not compelled to vacate the default judgment, in view of fact that garnishee failed to appear and contest motion for judgment. *Fort Stevens Pharmacy* v. *Hollywood Credit Clothing Co.* (D.C. Mun. App. 1956, 126 A. 2d 309).

In vacating default judgment against principal debtor and placing case on calendar for trial, municipal court, by same stroke of pen obliterated any right of creditor under vacated judgment to demand judgment against garnishee as to credits in favor of vacated-judgment debtor in such garnishee's hands. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

12. Validity of judgment

Under District of Columbia law, default judgment against garnishee on ground that he had not answered interrogatories was void where record did not disclose that interrogatories had been served on garnishee, despite court's recital that marshal had served interrogatories. *C. Austin* v. *O. Smith* (1962, 312 F. 2d 337, 114 U.S. App. D.C. 97).

Default judgment against garnishee, grounded on his failure to answer interrogatories, was void, although failure to appear and show cause was alternative ground for default and record did not show that garnishee appeared and showed cause. *Id.*

District of Columbia statute permitting default judgment against garnishee is in derogation of common law and should be construed strictly against party who invokes it, and judgment based upon such statute should also be construed strictly against garnisher. *Id.*

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

SUBCHAPTER III.—ATTACHMENT AND GARNISHMENT OF WAGES, ETC.

§ 16–571. Definition.

(a) As used in this subchapter, "wages" means:

(1) wages, salary, commissions, or other remuneration for services performed by an employee for his employer, including any such remuneration measured partly or wholly by percentages or share of profits, or by other sums based upon work done or results produced, whether or not the employee is given a drawing account; and

(2) any drawing account made available to an employee by his employer.

(b) The term "wages" does not include any amount paid or payable to an employee who is not a resident of the District of Columbia as remuneration for services performed within the District of Columbia, if the period for which the employee is engaged by the employer to perform such services within the District of Columbia is less than 15 consecutive days' duration; and any such amount shall be subject to attachment without regard to this subchapter. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Section is derived from subsec. (c) of section 15–317 of D.C. Code, 1961 ed., which was subsec. (f) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology, and changes are made in arrangement.

§ 16–572. Attachment of wages—Percentage limitations—Priority of attachments.

Notwithstanding any other provision of subchapter II of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, the attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of:

(1) 10 per centum of so much of the gross wages as does not exceed $200 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(2) 20 per centum of so much of the gross wages as exceeds $200 but does not exceed $500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(3) 50 per centum of so much of the gross wages as exceeds $500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month.

The levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event may moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgment debtor may be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16–507. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–314 (Mar. 3, 1901, ch. 854, § 1104A(a), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 275).

Minor changes are made in phraseology.

Cross Reference

Other provisions regarding attachments and priorities, see § 16–507.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Waiver of misnomer

Garnishee corporation, which was served in its business name, waived any defect in garnishment respecting name when it answered without objection. *Hollywood Credit Clothing Co, Inc.* v. *Autoscope, Inc.* (D.C. App. 1963, 193 A. 2d 733).

§ 16–573. Employer's duty to withhold and make payments—Percentage.

(a) Except as provided in subsection (b) of this section, an employer upon whom an attachment is served, and who:

(1) at the time is indebted for wages to an employee who is the judgment debtor named in the attachment; or

(2) becomes so indebted to the judgment debtor in the future—

shall, while the attachment remains a lien upon such indebtedness, withhold and pay to the judgment creditor, or his legal representative, within 15 days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until the attachment is wholly satisfied.

(b) Upon written notice of any court proceeding attacking the attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating the proceedings.

(c) Any payments made by an employer-garnishee in conformity with this section shall be a discharge of the liability of the employer to the judgment debtor to the extent of the payment.

(d) Under this section the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals $200, nor more than 20 per centum of the gross wages in excess of $200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals $500. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–315 (Mar. 3, 1901, ch. 854, § 1104A(b), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 275).

Changes are made in phraseology and arrangement.

§ 16–574. Judgment creditor to file receipts, in court, of amount collected.

(a) The judgment creditor shall:

(1) file with the clerk of the court, every three months after the serving of an attachment upon an employer-garnishee, a receipt showing the amount received and the balance due under the attachment as of the date of filing;

(2) file a final receipt with the court and furnish a copy thereof to the employee-garnishee; and

(3) obtain a vacation of the attachment within 20 days after the attachment has been satisfied.

(b) If the judgment creditor fails to file any of the receipts prescribed by subsection (a) of this section, an interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee suffered by, and tax costs in favor of, the party filing the motion to compel the accounting. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–316 (Mar. 3, 1901, ch. 854, § 1104A(c), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Changes are made in phraseology and arrangement.

§ 16–575. Judgment against employer-garnishee for failure to pay percentages.

If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this subchapter of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which the failure occurs. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Section is derived from subsec. (a) of section 15–317 of D.C. Code, 1961 ed., which was subsec. (d) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–576. Lapse of attachment upon resignation or dismissal of employee.

If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, the attachment shall lapse and no further deduction may be made thereon unless the judgment debtor is reinstated or reemployed within 90 days after the resignation or dismissal. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Section is derived from subsec. (b) of section 15–317 of D.C. Code, 1961 ed., which was subsection (e) of section 1 of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–577. Applicability of per centum limitations to judgments for support.

The per centum limitations prescribed by section 16–572 do not apply in the case of execution upon a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's wife, or former wife, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter.

In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–318 (Mar. 3, 1901, ch. 854, § 1104A(g), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Minor changes are made in phraseology.

§ 16–578. Court of General Sessions judgments—Lapse—Validity.

An attachment issued by the District of Columbia Court of General Sessions upon a judgment of that court duly docketed in the United States District Court for the District of Columbia, and levied within six years from the date of the judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall not lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 15–132(a). (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 277; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from subsec. (a) of section 15–319 of D.C. Code, 1961 ed., which was subsec. (h) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

Cross References

Method of making levies, avoidance of attachment, etc., see §§ 16–511 to 16–513.

Quashing of attachments, see § 16–506.

§ 16–579. Payments by employer-garnishee where employee has no salary or salary inadequate for services rendered.

Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that the salary or compensation is merely colorable and designed to defraud or impede the creditors of the debtor, the court may direct the employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by the judgment debtor under his employment or upon the debtor's then earning ability. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 277).

Section is derived from subsec. (b) of section 15–319 of D.C. Code, 1951 ed., which was subsec. (i) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–580. Quashing attachment where judgment obtained to hinder just claims.

Where an attachment levied under this subchapter is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of an interested person, may quash the attachment upon satisfactory proof that the judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 15–319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 277).

Section is derived from subsec. (c) of section 15–319 of D.C. Code, 1951 ed., which was subsec. (j) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–581. Rules of procedure.

The judges of the District of Columbia Court of General Sessions and of the United States District Court for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this subchapter. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–320 (Aug. 4, 1959, Pub. L. 86–130, § 8, 73 Stat. 278; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The reference "this subchapter" is substituted for "this Act".

§ 16–582. Attachments to which this subchapter is applicable.

This subchapter applies only with respect to attachments upon wages, as defined by section 16–571, issued on or after 60 days from August 4, 1959. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1.)

Revision Notes

Based on act Aug. 4, 1959, Pub. L. 86–130, § 6, 73 Stat. 278.

Section was classified as a note under section 15–314 of D.C. Code, 1961 ed.

Changes are made in phraseology.

Chapter 6.—BONDS AND UNDERTAKINGS

Sec.
16–601. Undertaking in lieu of fiduciary's bond.

§ 16–601. Undertakings in lieu of fiduciary's bond.

A bond required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of

creditors, or other fiduciary appointed or confirmed by the United States District Court for the District of Columbia, or a judge thereof, or a bond required from a party to a cause or proceeding pending in that court, shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises; and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court directs and the court may give judgment thereon in favor of any person thereby aggrieved against the principal and sureties for the damages sustained by him, and that judgment may be rendered against all or any of the parties whose names are thereto signed.

The United States District Court for the District of Columbia has jurisdiction to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon the undertaking, as law and justice require. This section does not deprive a party having a claim or cause of action under or upon the undertaking from electing to pursue his ordinary remedy by civil suit.

The provisions of this Code relating to actions, remedies and proceedings upon bonds of fiduciaries apply to such undertakings to the same extent as if undertaking had been expressly mentioned and referred to therein. (Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509, § 3(c)(1).)

AMENDMENT

1964—Section 3(c)(1) of act Aug. 30, 1964, amended title 16, by adding chapter 6 thereto.

NOTES TO DECISIONS UNDER PRIOR LAW

Action on bond 2
Amount of recovery 3
Attorneys fees 4
In general 1

1. In general

This section does not repeal section 16–301, relative to attachment bonds. *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (1922, 276 F. 631, 51 App. D.C. 109).

A bond executed to the United States is valid, although there is no previous statutory authorization therefor. *United States* v. *Pumphrey* (11 App. D.C. 44).

2. Action on bond

Action to recover on bond for damages from wrongful suing out of an attachment is maintainable under this section providing that when a bond is referred to in statutes it signifies an obligation in a certain sum or penalty subject to condition on breach of which bond becomes absolute and is enforceable by action. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *Id.*

3. Amount of recovery

Where plaintiffs in attachment filed bond and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125)

4. Attorneys fees

Where executor appropriated to his own use an amount greatly in excess of his approved commission and estate had no assets to pay approved fee due attorney for estate, surety on executor's bond was liable for amount of the fee. *In re Estate of P. M. Oberly* (1964, 228 F. Supp. 665).

Chapter 7.—CRIMINAL PROCEEDINGS IN THE COURT OF GENERAL SESSIONS

Sec.
16–701. Rules and regulations.
16–702. Information, prosecution by.
16–703. Process of criminal division—Fees.
16–704. Bail—Collateral security.
16–705. Jury trial—Trial by court.
16–706. Enforcement of judgments—Commitment upon non-payment of fine.
16–707. Disposition of fines.
16–708. Penalties for wrongful conversion of forfeitures and fines.
16–709. Executions on forfeited recognizances and judgments.
16–710. Suspension of imposition or execution of sentence.

§ 16–701. Rules and regulations.

The District of the Columbia Court of General Sessions may make rules and regulations deemed necessary and proper for conducting business in the criminal division of the court. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the last part of the first sentence of section 11–748a of D.C. Code, 1961 ed.

Section 11–755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, in connection with the merger, by the act of Apr. 1, 1942, of the Police Court and the Municipal Court, to form a new Municipal Court, subsec. (a) thereof provided, among other things, that the court thus formed, and the judges thereof, should have and exercise the same powers and jurisdiction theretofore had and exercised by the Police Court and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Reference to "criminal division" of the court is inserted because, since the above-mentioned merger, the Municipal Court (now the Court of General Sessions) has exercised its civil jurisdiction and powers through a civil division, and its criminal jurisdiction and powers through a criminal division. The above-cited section 11–755 (subsec. (a)) of D.C. Code, 1961 ed., provided that the court should consist of a civil branch and a criminal branch (among others). See, also, rule 1 of the Rules Regulating Practice Before the "Criminal Division" of the Court.

Minor changes are made in phraseology.

The power of the Court of General Sessions to prescribe rules governing practice and procedure, generally, in the court, are set out in section 13–101 herein. For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

§ 16–702. Information, prosecution by.

Prosecutions in the criminal division of the District of Columbia Court of General Sessions shall be by information by the proper prosecuting officer. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 44, 31 Stat. 1196; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the first sentence of section 11–715a of D.C. Code, 1961 ed.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "municipal court" for the same reasons stated in revision note under section 16–701 herein.

A minor change in phraseology.

For remainder of sections 11–715a and 11–755 of D.C. Code, 1961 ed., see tables.

CROSS REFERENCES

Jury trials in vagrancy proceedings, see § 22–3301.

Procedure, see § 13–101.

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1. In general

Although police court could try criminal cases on information, there was no presumption that it would sentence one to hard labor so as to deprive it of jurisdiction. *Cleveland* v. *Mattingly* (1923, 287 F. 948, 52 App. D.C. 374, certiorari denied 43 S. Ct. 521, 262 U.S. 744, 67 L. Ed. 1211).

One guilty of changing the name of a licensee appearing on a motor vehicle operator's permit, whereupon he was sentenced to pay a fine of $275, and in default to be committed to the Washington Asylum and Jail for 60 days; it was proper and within the jurisdiction of the court. *Dorsey* v. *Peak* (1928, 24 F. 2d 892, 58 App. D.C. 54, 57 A.L.R. 865).

While other courts of the United States may commit for an indefinite period, a defendant in default of payment of a fine, the police court of the District was limited to one year. *Dodd* v. *Peak* (1931, 47 F. 2d 430, 60 App. D.C. 68).

The alternative sentence of imprisonment in default of payment of fine is not imposed as a part of the penalty but as a means of compelling payment of the fine. *Peeples* v. *District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

Where the statute provides a fine but no imprisonment, an alternative prison sentence may be imposed, and where a fine or imprisonment or both may be imposed, and both are imposed, the weight of authority is that in default of payment of fine, the defendant may be commited for an additional term after expiration of the term for which sentenced. *Id.*

2. Constitutionality

A person charged with having committed the crime of conspiracy in the District of Columbia is entitled to a jury trial; and to accord the accused a right to be tried by jury in an appellate court, after he has been once fully tried, otherwise than by a jury, in the court of original jurisdiction and sentenced to pay a fine or be imprisoned, does not satisfy the requirements of the Constitution. *Callan* v. *Wilson* (1888, 8 S. Ct. 1301, 127 U.S. 540, 32 L. Ed. 223).

Constitutional requirement that trial of all crimes shall be by jury is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury. *District of Columbia* v. *Colts* (1930, 51 S. Ct. 52, 282 U.S. 63, 75 L. Ed. 177).

This act does not violate either the Fifth or Sixth Amendments. *United States* v. *Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 89).

3. Cumulative sentences

Section 934 of 1901 Code, relative to cumulative sentences, does not apply to sentences imposed upon different informations, after separate convictions at different times, nor does it apply to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, as provided in this section. *Harris* v. *Lang* (27 App. D.C. 84, 7 Ann. Cas. 141, 7 L.R.A., N.S., 124). See, also, *Harris* v. *Nixon* (27 App. D.C. 94, certiorari denied 26 S. Ct. 761, 201 U.S. 645, 50 L. Ed. 903).

4. Findings of court

Under this section the finding and judgment entered by the police court were entitled to the same force and effect in all respects as if entered and pronounced upon the verdict of a jury. *District of Columbia* v. *Kendall* (1927, 20 F. 2d 287, 57 App. D.C. 271).

5. Fines and imprisonment

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by former §§ 11–606 and 11–616 was limited by the later § 25–128, is without merit, since the general statute existed before the special one and Congress must have been aware of the older ones, and had it intended to modify the earlier, would have done so, and accordingly, his imprisonment must be affirmed. *Peeples* v. *District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

A note of warning should be addressed to the trial court that the alternative sentence is a mode of compelling payment of a fine and its use should be confined to such and should not be used for the purpose of imposing a longer term of imprisonment than is permitted by law. *Id.*

Statute authorizing court to commit defendant in default of payment of fine for term not exceeding one year provides means of enforcing punishment as distinguished from punishment provided by statute defining crime. *D. Henderson* v. *United States* (D.C. App. 1963, 189 A. 2d 132).

Alternative sentence of imprisonment for failure to pay fine is not to be considered a part of the penalty for the crime. *Id.*

Defendant was not entitled to relief from sentence imposed upon failure to pay fine imposed in addition to maximum imprisonment authorized as punishment on any theory that if she were indigent, alternative sentence coupled with primary sentence would be tantamount to sentence in excess of that authorized and that court should have, as part of sentencing procedure, inquired into her ability to pay where record revealed nothing as to her financial resources, she did not claim inability to pay fine, and there was nothing to indicate that court used alternative sentence to accomplish imprisonment for term longer than permitted by statute. *Id.*

6. Mandamus

The District of Columbia Municipal Court had jurisdiction to direct that charge of practicing healing arts without license should be tried by jury, and an erroneous decision on the question would not constitute such unlawful exercise of authority as would entitle Government to writ of mandamus directing Municipal Court to expunge jury trial order from the record. *United States* v. *Kronheim* (D.C. Mun. App. 1951, 80 A. 2d 280).

The fact that ruling of District of Columbia Municipal Court granting jury trial in prosecution for practicing healing arts without a license could not be reviewed in the regular course of appeal was not such an exceptional

circumstance as would call for issuance of writ of mandamus expunging order from record. *Id.*

7. Municipal ordinance

One charged with the violation of a municipal ordinance, the maximum penalty for which is a fine not exceeding $40, is not entitled to a trial by jury. *Bowles* v. *District of Columbia* (22 App. D.C. 321).

8. Record on appeal

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of $300 and in default of payment to be imprisoned for an additional year. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

9. Review

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of $300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was to severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

10. Right to jury trial

Congress in the exercise of its general and exclusive power of legislation over the District, could provide for the trial of civil causes of moderate amount by a justice of the peace, or, in his presence, by a jury of 12, or of any less number, and allowing either party an appeal. *Capital Traction Co.* v. *Hof* (1899, 19 S. Ct. 580, 174 U.S. 1, 43 L. Ed. 873).

Where the accused would be entitled to a jury trial under the Constitution, trial shall be by jury unless waived, but petty offenses may be tried without jury. *District of Columbia* v. *Colts* (1930, 51 S. Ct. 52, 282 U.S. 63, 75 L. Ed. 177).

The right of trial by jury does not extend to every criminal proceeding. *District of Columbia* v. *Clawans* (1937, 57 S. Ct. 66, 300 U.S. 617, 81 L. Ed. 843).

Constitutional provisions with relation to jury trial apply, first, in all cases, especially in all cases where as here there is no election of right and no appeal of right, in which the offense charged was an indictable offense under the common law, without regard to the measure of punishment; and, second, in all cases without regard to the nature of the offense, where the punishment which may be inflicted under the statute involves a sentence as severe as confinement in jail for 90 days. *Clawans* v. *District of Columbia* (1936, 84 F. 2d 265, 66 App. D.C. 11, affirmed 57 S. Ct. 660, 300 U.S. 617, 81 L. Ed. 843).

A single offense of using premises for a purpose other than a single family dwelling without an occupancy permit or of operating a rooming house without a license, is a petty offense not involving moral turpitude nor indictable at common law, and therefore a jury trial is not demandable as of right. *Savage* v. *District of Columbia* (D.C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 60 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 68 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

Under this section providing for right to jury trial in cases in which fine or penalty may be more than $300, trial by jury should be had if penalty of more than $300 may be imposed on any one offense, but consolidation for trial of nine petty offenses did not amount to one greater offense, and, therefore, possibility that general sentence exceeding $300 could be imposed would not require trial by jury upon defendant's demands. *Scott, Jr.* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 579).

The District of Columbia Municipal Court acting on demand for jury trial in prosecution for practice of healing arts without license was performing a judicial function, and not a ministerial act which could be controlled by mandamus. *United States* v. *Kronheim* (D.C. Mun. App. 1951, 80 A. 2d 280).

11. Soliciting prostitution

Soliciting prostitution, punishable by jail sentence of 90 days, is a crime which is of right tried by a jury. *Blackburn* v. *United States* (1936, 84 F. 2d 269, 66 App. D.C. 15).

Neither the nature of the offense of soliciting prostitution nor the amount of the punishment brought the prosecution within the limits of the constitutional guaranty of a jury trial. *Bailey* v. *United States* (1938, 98 F. 2d 306, 69 App. D.C. 25).

12. Violation of traffic regulations

One charged with operating a motor vehicle in violation of statute not only recklessly but so as to endanger property and individuals, has a constitutional right to a jury trial. *District of Columbia* v. *Colts* (1930, 51 S. Ct. 52, 282 U.S. 63, 75 L. Ed. 177).

13. Waiver of jury trial

Trial by jury may be waived. *Shick* v. *United States* (1904, 24 S. Ct. 826, 195 U.S. 65, 49 L. Ed. 99).

Where defendant who was not unfamiliar with criminal procedure and who had had the experience of two prior jury trials, had demanded jury trial, but his attorney informed judge that defense desired to waive jury trial, judge immediately informed jury of this fact, counsel returned to talk to accused about matter, and accused raised no objection until after adverse decision by judge, even if accused did not initiate the waiver of jury, he ratified the waiver, and thus made the waiver his personal act, and he was not deprived of jury trial without legal and intelligent waiver of the same. *Hensley* v. *United States* (C.A.D.C. 1960, 281 F. 2d 605).

Where defendant was arraigned and pleaded not guilty to assault charge and demanded trial by jury, and a month later case was called for jury trial, and defendant was present, and, after completion of voir dire examination, defendant's attorney approached bench and informed trial judge that defense desired to waive jury trial and take trial by court, and prosecution voiced no opposition, and trial judge told jury in open court that defense preferred trial by court and that jury would be relieved from sitting in case, there was a valid waiver of jury trial by defendant under statute. *Hensley* v. *United States* (D.C. Mun. App. 1959, 155 A. 2d 77).

§ 16–703. Process of criminal division—Fees.

(a) The criminal division of the District of Columbia Court of General Sessions may issue process for the arrest of persons against whom an information is filed or complaint under oath is made.

(b) Process shall:

(1) be under the seal of the court:

(2) bear teste in the name of a judge of the court; and

(3) be signed by the clerk.

(c) In cases arising out of violations of any of the ordinances or laws of the District, process shall be directed to the Chief of Police, who shall execute the process and make return thereof in like manner as in other cases.

(d) In criminal cases cognizable in the United States District Court for the District of Columbia the process issued by the Court of General Sessions shall be directed to the United States marshal, except in cases of emergency, when it may be directed to the Chief of Police.

(e) For services pursuant to subsection (d) of this section the marshal shall receive the fees prescribed by section 15–709(b)(2). (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–748b, 11–748c, 11–748d, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; R.S.D.C. §§ 1065–1067; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates first clause of section 11–748a of D.C. Code, 1961 ed., and sections 11–748b to 11–748d thereof.

Section 11–755 of the Code is cited above as one of the sources of this section for the reasons stated in revision note under section 16–701 herein.

Section 11–751a of the Code is cited as one of the sources of the section because section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Subsec. (a) of this section is based on the first clause of section 11–748a of D.C. Code, 1961 ed., which empowered the Municipal Court (now Court of General Sessions) to issue the process described. The reference "criminal division of the Court of General Sessions" is subtituted for the reference to the municipal court, in view of the enactment, in 1942, of section 11–755 (a) of D.C. Code, 1961 ed., and the 1962 amendment of that section. See revision note under section 16–701 herein. The additional provision in the first clause of section 11–748a that the court should have power to compel the attendance of witnesses is omitted as having been superseded by a provision in section 11–756(c) of D.C. Code, 1961 ed., that is carried into another section of this revised Part (see tables).

Sections 748b to 748d of D.C. Code, 1961 ed., which are carried into subsecs. (c), (d), and (b), respectively, of this section, were made applicable to the criminal division of the Municipal Court (now Court of General Sessions) pursuant to section 11–755(b) of D.C. Code, 1961 ed., which provided that service of process in the criminal division of the Municipal Court should be had as provided under existing law for the Police Court of the District of Columbia.

References to the major and superintendent of police are changed to Chief of Police pursuant to Reorganization Order No. 46, set out in Appendix to Title 1 of D.C. Code, 1961 ed.

Under section 4–138 of D.C. Code, 1961 ed., a warrant for search or arrest may be executed in any part of the District by any member of the police force.

Rule 13 of the Rules Regulating Practice Before the Criminal Division of the court provides: "The Federal Rules of Criminal Procedure shall apply to all proceedings in the criminal division of this court in which the judges are acting as committing magistrates." Therefore, in addition to this section, process of the Court of General Sessions in criminal cases cognizable in the United States District Court is governed by the Federal Rules of Criminal Procedure and by 18 U.S.C § 3041.

Subsec. (e) of this section is new, but states no new law, being in the nature of a cross reference. It is inserted for the purpose of completeness.

Changes are made in phraseology.

For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

§ 16–704. Bail—Collateral security.

(a) A person charged with an offense triable in the criminal division of the Court of General Sessions may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the court or the station keeper of the police precinct within which he is apprehended. When a sum of money is deposited as collateral security as provided by this section it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court. When forfeited, it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the United States or of the District. Every person receiving any sum of money deposited as provided by this section shall be deemed in law the agent of the person depositing it or of the United States or the District, as the case may be, for all purposes of properly preserving and accounting for money.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any forfeitures collected in the criminal division of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the first and second sentences of the second paragraph of section 11–748a of D.C. Code, 1961 ed., and part of the proviso at the end thereof.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is subtituted for "municipal court", for the same reasons given in revision note under section 16–701 herein.

Changes are made in phraseology.

For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

For rules governing the execution of bonds in the criminal division of the Court of General Sessions, see rule 5 of the court's rules regulating practice and procedure in that division.

§ 16–705. Jury trial—Trial by court.

(a) In a criminal prosecution within the jurisdiction of the Court of General Sessions in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused in open court expressly waives trial by jury and requests to be tried by the judge. In the latter case, the trial shall be by the judge, and the judgment and sentence shall have the same force and effect in all respects as if they had been entered and pronounced upon the verdict of a jury.

(b) In any case where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless it is a case wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days and the accused demands a trial by jury. In the latter case the trial shall be by jury.

(c) The jury for service in the criminal division of the court shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715a, 11–716a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 44, 45, 31 Stat. 1196, 1197; Mar. 3, 1925, ch. 443, §§ 4, 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates the second sentence of the first paragraph, and the first sentence of the second paragraph, of section 11–715a of D.C. Code, 1961 ed., with the first clause of the first sentence of section 11–716a thereof.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section; and in subsec. (a), "Court of General Sessions" is substituted for "said court" (which, as used in section 11–715a of D.C. Code, 1961 ed., referred to the municipal court), and in subsec. (c), "criminal division of the court" is substituted for "said court" (which, as used in section 11–716a of D.C. Code, 1961 ed., also referred to the municipal court), for the same reasons stated in revision note under section 16–701 herein.

In subsec. (c) of this section, which, as indicated above, is from section 11–716a of D.C. Code, 1961 ed., words "unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve" are inserted to conform with present practice in the criminal division of the Municipal Court as expressed in the criminal rules of the court. Section II(a) of rule 14 of such rules provides in part that at any time before a verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number of persons less than 12. For other provisions relating to jury trials, including those relating to automatic waiver of the right to demand a jury, see other provisions of that rule.

Changes are made in phraseology.

For remainder of sections 11–715a, 11–716a, and 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Right to jury trial

Defendant must have knowledge of penalty he may receive inasmuch as his right to jury trial depends on severity of punishment. *A. Dobkin* v. *District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

§ 16–706. Enforcement of judgments—Commitment upon nonpayment of fine.

The Court of General Sessions may enforce any of its judgments rendered in criminal cases by fine or imprisonment, or both. Except as otherwise provided by law, in any case where the criminal division of the court imposes a fine, the court may, in default of the payment of the fine imposed, commit the defendant for such a term as the court deems right and proper, not to exceed one year. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715a, 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 44, 48, 31 Stat. 1196, 1197; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 25, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates part of the first sentence and all of the second sentence of the first paragraph of section 11–748a of D.C. Code, 1961 ed., with the second sentence of the second paragraph of section 11–715a thereof. The second sentence of the first paragraph of section 11–748a, and the second sentence of the second paragraph of section 11–715a thereof, were identical.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section; the words "Court of General Sessions may enforce any of its judgments rendered in criminal cases" are substituted for "to enforce any of its judgments"; and the words "criminal division of the court" are substituted for "said court" (which referred to the municipal court), for the reasons stated in revision note under section 16–701 herein.

The exception phrase is inserted at the beginning of the second sentence, to avoid conflict between that sentence and other laws. For example, see section 22–109 of D.C. Code, 1961 ed., as amended in 1953, wherein the maximum term of imprisonment upon failure to pay a fine imposed upon conviction of certain specified offenses is six months for each such offense.

Changes are made in phraseology.

For remainder of sections 11–715a, 11–748a, and 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion 1
Fines and imprisonment 2
Imprisonment for nonpayment 3
Limitation of jurisdiction 4
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Record on appeal 6

1. Abuse of discretion

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of $300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

This section providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

2. Fines and imprisonment

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by this section and section 11–715a is limited by the later § 25–128, is without merit, since the general statute existed before the special one and Congress must have been aware of the older ones. Had the Congress intended later to modify the earlier, it would have done so. Accordingly, judgment of conviction affirmed. *Peeples* v. *District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

A note of warning should be addressed to the trial court that the alternative sentence is a mode of compelling payment of a fine and its use should be confined to such and should not be used for the purpose of imposing a longer term of imprisonment than is permitted by law. *Id.*

The alternative sentence of imprisonment in default of payment of fine is not imposed as a part of the penalty but as a means of compelling payment of the fine. *Id.*

Where the statute provides a fine but no imprisonment, an alternative prison sentence may be imposed, and where a fine or imprisonment or both may be imposed, and both are imposed, the weight of authority is that in default of payment of fine, the defendant may be committed for an additional term after expiration of the term for which sentenced. *Id.*

3. Imprisonment for nonpayment

Where trial imposed a money fine against defendant operator of automobile body works for failure to file monthly Sales and Use tax returns as required by statute, trial court under this section could enforce payment of fine by ordering defendant in the alternative to serve a jail sentence. *Perlich* v. *District of Columbia* (D.C. Mun. App. 1952, 90 A. 2d 227).

Sentences imposing fines or term in jail in default of paying fines were not illegal as jail sentences. *Savage* v. *District of Columbia* (D.C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

A defendant convicted for violation of Female Eight Hour Law, § 36–301 et seq., could be sentenced to prison in event of default in payment of fines, notwithstanding that § 36–309 provided for fines only, in view of this section authorizing commitment of defendant in default of payment of fine imposed. *Anderson* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 710).

4. Limitation of jurisdiction

Police court was an "inferior court" or "limited jurisdiction." It had original jurisdiction concurrently with the District Court, except as otherwise provided, of all crimes in the District not capital or infamous, and all offenses against municipal ordinances. It had the power to examine, commit, or hold to bail, but had no power to admit attorneys nor suspend an attorney on charge of solicitation. *Mullen* v. *Canfield* (1939, 105 F. 2d 47, 70 App. D.C. 168).

5. Payment of fine precluding appeal

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without attempting to stay judgment and without making protest or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 189).

6. Record on appeal

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of $300 and in default of payment to be imprisoned for an additional year. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

§ 16–707. Disposition of fines.

(a) All fines payable and paid under judgment of the criminal division of the Court of General Sessions shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any fines paid in the criminal division of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from that part of the third sentence of the second paragraph of section 11–748a of D.C. Code, 1961 ed., that preceded the first semicolon in the paragraph, and the proviso at the end of the paragraph. Insofar as the paragraph also related to forfeitures, it is carried into section 16–704 herein.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "said municipal court", for the same reasons stated in revision note under section 16–701 herein.

Changes are made in phraseology.

For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

§ 16–708. Penalties for wrongful conversion of forfeitures and fines.

Whoever, being an agent as contemplated and defined by section 16–704(a), or by section 16–707(a), wrongfully converts to his own use any money received by him as provided therein, is guilty of embezzlement, and shall be fined not more than $5,000 or imprisoned not more than five years, or both. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–748a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 29, 1953, ch. 159, § 410, 67 Stat. 108).

Section is derived from a clause in the third sentence of the second paragraph of section 11–748a of D.C. Code, 1961 ed. For remainder of such section 11–748a, see tables.

As herein set out, the provisions relate to wrongful conversion of forfeitures and fines collected or paid in the criminal division of the Court of General Sessions, formerly designated the municipal court. See revision note under section 16–701 herein.

Words "and upon conviction thereof", which followed "embezzlement," are omittted as surplusage.

Changes are made in phraseology.

§ 16–709. Executions on forfeited recognizances and judgments.

The Court of General Sessions may issue execution on all recognizances forfeited in its criminal division, upon motion of the prosecuting officer; and all writs of fieri facias or other writs of execution on judgments issued by the criminal division shall be directed to and executed by the United States marshal. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–724a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 57, 31 Stat. 1199; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–724a of D.C. Code, 1961 ed.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are cited as sources of this section; "Court of General Sessions" is substituted for "said court" (which referred to the municipal court); words "recognizances forfeited in its criminal division" are substituted for "forfeited recognizances"; and the reference "the criminal division" is substituted for "said court" where the latter term appeared for the second time in section 11–724a, for the reasons stated in revision note under section 16–701 herein.

Changes are made in phraseology.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Remission of penalty

R.S. § 1020 (U.S.C. title 18, former § 601), conferred authority on court to remit penalty of forfeited recognizance in certain cases. *United States* v. *Von Jenny* (39 App. D.C. 377).

§ 16–710. Suspension of imposition or execution of sentence.

In criminal cases in the District of Columbia Court of General Sessions, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, for

such time and upon such terms as it deems best, if it appears to be the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. A person may not be put on probation without his consent. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–757, 24–102 (June 25, 1910, ch. 433, § 2, 36 Stat. 864; June 18, 1953, ch. 128, § 1, 67 Stat. 65; June 20, 1958, Pub. L. 85–463, § 2, 72 Stat. 216; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–757 and 24–102 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provisions from which section 11–757 of D.C. Code, 1961 ed., was derived (the above-cited section 1 of act June 18, 1953) were also set out in that Code as section 11–942a thereof because they referred, not only to the Municipal Court (now the Court of General Sessions), but also to the Juvenile Court. In this section, the provisions that related to the Juvenile Court are omitted, as they are set out in section 16–2383 herein.

Section 11–757 of D.C. Code, 1961 ed., provided that in each case of the imposition of sentence and the suspension of the execution thereof, the Municipal Court (now, the Court of General Sessions) might, in its discretion, place the defendant on probation "as provided by section 24–102". Section 24–102, as enacted in 1910, conferred power upon both the Supreme Court of the District of Columbia (later redesignated the District Court) and the former police court (of which the Municipal Court was the successor) to place defendants on probation, and prescribed certain conditions and procedures to be followed. Insofar as the District Court was concerned, that section was repealed by act June 20, 1958, Pub. L. 85–463, § 2, 72 Stat. 216, since probation matters in the United States District Court for the District of Columbia are now covered by Title 18, United States Code, section 3651 et seq., in view of the amendment of section 3651 thereof by section 1 of the 1958 act. Section 2 of the 1958 act, in repealing section 24–102, D.C. Code, 1961 ed., insofar as it related to the District Court, contained a saving clause, as follows: "but nothing contained in this act shall be construed to amend or repeal the provisions of the act entitled 'An act to provide for the suspension of the imposition or execution of sentence in certain cases in the Municipal Court for the District of Columbia and in the Juvenile Court of the District of Columbia', approved June 18, 1953 (67 Stat. 65)". However, section 24–102 of D.C. Code, 1961 ed., never related to the Juvenile Court, and, as amended by the 1958 act to strike out the reference to the District Court, it related solely to the Municipal Court (now, the Court of General Sessions). Therefore, it is consolidated with section 11–757 of D.C. Code, 1961 ed., to form this revised section. The 1953 act cited in the above-quoted provisions of the 1958 act was classified to section 11–757, and, insofar as it related to the Juvenile Court, to section 11–968 of D.C. Code, 1961 ed.. which is carried into section 16–2383 herein. The 1953 act did not provide that the Juvenile Court, in placing defendants on probation, should do so "as provided by section 24–102".

Changes are made in phraseology.

CROSS REFERENCES

Probation and suspension of sentences in the United States District Court for the District of Columbia, see U.S. Code, Title 18, § 3651.

When probation may be granted, see § 16–710.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Appeal after suspension of sentence

Defendant convicted of indecent assult had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas* v. *United States* (D.C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assualt and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less that $50 review shall be by application. *Id.*

Chapter 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

Sec.
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§ 16–901. Definition.

As used in this chapter, "court" means the Domestic Relations Branch of the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1.)

REVISION NOTES

Section is new, but states no new law. It is inserted for the purpose of clarification. At the time of the enactment, in 1901, of the provisions carried into this chapter, the term "court", as used in the provisions, referred to the Supreme Court of the District of Columbia, the name of which was changed in 1936 to the "District Court of the United States for the District of Columbia", and in 1948 to the "United States District Court for the District of Columbia". Jurisdiction of

actions for divorce or annulment of marriage, legal separation from bed and board, and related matters, continued to be vested in that court until the enactment of the act Apr. 11, 1956, ch. 204, § 101 et seq., 70 Stat. 111–113 (D.C. Code, 1961 ed., § 758 et seq.). Since that time, it has been vested in the Domestic Relations Branch of the Municipal Court, the name of which was changed by act Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171, to the District of Columbia Court of General Sessions. See section 11–1141 herein.

§ 16–902. Residence requirements.

A decree of nullity of marriage or divorce may not be rendered in favor of anyone who has not been a bona fide resident of the District of Columbia for at least one year next before the application therefor, and a divorce may not be decreed in favor of any person who has not been a bona fide resident of the District for at least two years next before the application therefor for any cause that has occurred out of the District and prior to residence therein. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–401 (Mar. 3, 1901, ch. 854 § 971, 31 Stat. 1345; Aug. 7, 1935, ch. 453, § 2, 49 Stat. 539).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Abandonment of abode

Where wife abandons her abode in District of Columbia and establishes a new abode in Virginia, if at any time during her stay in Virginia she forms the intention of remaining there indefinitely, she acquires a domicile in Virginia and is no longer a resident of District of Columbia for purposes of filing divorce complaint, notwithstanding that she may have a floating intention to return to the District at some future time. *Adams* v. *Adams, Jr.* (D.C. Mun. App. 1957, 136 A. 2d 866).

2. Accrual of right of action

Both separation and desertion are continuing acts and right of action for divorce incident to them is not perfected until required period of time has elapsed. *Oatley* v. *Oatley* (D.C. Mun. App. 1960, 161 A. 2d 834).

For purposes of this section requiring two years' residence within district as prerequisite to divorce for cause which occurred out of district and prior to residence therein, voluntary separation or desertion as basis for divorce occurs when time element required by this section lapses rather than when parties initially separate. *Id.*

3. "Application" defined

Residential requirement of this section providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in statute dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion." *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

4. Bona fide resident

Even though a marriage is void ab initio without being so decreed for reason that husband had a previous undissolve marriage, where a judicial decree of nullity is sought in District of Columbia, the petitioning party is required to establish that she has been a bona fide resident of District for at least one year preceding the petition for annulment. *Koonin, next friend of Hornsby* v. *Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

5. Construction

The provision of this section, that no divorce shall be granted to anyone who has not been a bona fide resident of District for at least one year before application therefor did not require Federal District Court to refuse to entertain wife's amended cross-complaint, charging husband's commission of adultery with one named therein as co-respondent and cross-defendant, in husband's divorce suit, even if cross-complainant lost her District domicile by moving to Maryland before filing amended cross-complaint. *Daniels* v. *Souders* (1952, 195 F. 2d 780, 90 U.S. App. D.C. 298).

Exclusionary provisions of this section are in the conjunctive and cause of action for divorce must have occurred both outside of district and prior to residency in district before longer period of residence is required. *Oatley* v. *Oatley* (D.C. Mun. App. 1960, 161 A. 2d 834).

6. Cross-complaint

Where cases adopting view, in other jurisdictions than District of Columbia that divorce may be granted nonresident of state of forum on cross-petition in divorce action by resident thereof, though this section requires plaintiff in divorce action to be resident of such state for designated time, clearly indicate that plainest principles of equity furnished impulse for such view, it will be adopted by Court of Appeals for District of Columbia in construing District Code prohibiting divorce decree in favor of one who has not been bona fide resident of District for at least one year before application therefor. *Daniels* v. *Souders* (1952, 195 F. 2d 780, 90 U.S. App. D.C. 298).

7. Domicile

In divorce action instituted by wife of North Carolina serviceman one year after she and her husband began living in Washington, D.C., but only a month and a half after date of their separation, evidence sustained finding that there was no intent on part of husband to abandon his former domicile and establish one in Washington, and therefore court did not have jurisdiction of suit. *Stephenson* v. *Stephenson* (D.C. Mun. App. 1957, 134 A. 2d 105).

8. Evidence

"The statute in no way changes the rules of evidence but is designed primarily to prevent this jurisdiction from becoming a haven for those seeking divorce." *Creel* v. *Creel* (43 App. D.C. 82).

Evidence supported finding that wife, suing for divorce, was a resident of New York, and not of the District of Columbia, and justified decree dismissing suit. *Metcalf* v. *Metcalf* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

9. Foreign decrees

A divorce granted in any State according to its laws by a court having jurisdiction of the cause and of both the parties is valid and effectual everywhere. *Sears* v. *Sears* (1937, 92 F. 2d 530, 67 App. D.C. 379).

10. Goood faith

Residence for purpose of divorce must be in good faith. *Downs* v. *Downs* (23 App. D.C. 381).

11. Instructions

An instruction in a prosecution for perjury committed in a divorce action that "residence required does not necessarily mean the technical, legal domicile, but does mean that locality where the social life of the parties is lived, and that locality where the greatest publicity will be given by litigation concerning his status" was erroneous and standing alone would require reversal. *McFarland* v. *U.S.* (1949, 174 F. 2d 538, 85 U.S. App. D.C. 19).

12. Jurisdiction

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

The federal District Court for District of Columbia had jurisdiction of husband's action for divorce on ground of adultery committed by wife outside District, though plaintiff did not allege his residence therein for two years, where wife's acts of adultery were alleged to have been committed within period of over a year for which complaint alleged that plaintiff was a resident of District. *Orlans* v. *Orlans et al.* (1956, 238 F. 2d 31, 99 U.S. App. D.C. 170).

This section does not require two years residence where cause for divorce occurs outside District during period in which plaintiff is bona fide resident of District. *Id.*

The voluntary appearance of the defendant in such cases does not confer jurisdiction. *Winston* v. *Winston* (1921, 271 F. 551, 50 App. D.C. 321).

Jurisdiction in divorce suit not shown, by reason of nonresidence. *Rollings* v. *Rollings* (1932, 53 F. 2d 917, 60 App. D.C. 305). See, also, *Marcum* v. *Marcum* (1933, 62 F. 2d 871, 61 App. D.C. 332); *Ridgeway* v. *Ridgeway* (1933, 63 F. 2d 458, 61 App. D.C. 395).

Where wife's former marriage to another had been annulled by decree of chancery court of Mississippi wherein the other but not the wife was then domiciled, and wife was not served with process there or anywhere else except by publication and entered no appearance, regardless of whether the annulment was entitled to full faith and credit in District of Columbia, it was within power of district court to recognize it in wife's suit for limited divorce against husband by subsequent marriage. *Shima* v. *Shima* (1942, 130 F. 2d 809, 75 U.S. App. D.C. 370).

District Court was without jurisdiction of a bill for divorce where plaintiff had not been a bona fide resident of the District of Columbia for at least one year before filing her complaint. *Clark* v. *Clark* (1948, 79 F. Supp. 722).

If court does not have jurisdiction of the original bill for divorce, it is without jurisdiction of the cross-bill and it will be treated as a mere auxiliary suit or as a dependency upon the original bill, and, when the original bill is dismissed for lack of jurisdiction, the cross-bill must also be dismissed. *Id.*

In wife's divorce suit, it was proper for trial court at conclusion of wife's case to make finding of fact as to whether wife was bona fide resident of District of Columbia for one year preceding filing of her complaint, as required by this section. *Adams* v. *Adams, Jr.* (D.C. Mun. App. 1957, 136 A. 2d 866).

In divorce suit by wife who lived in District of Columbia at time of her marriage and for a year thereafter when she moved to Arlington, Virginia, where she lived for nearly two years prior to bringing suit against husband who was in armed services and who had remained in District only a few days after the marriage, evidence sustained trial court's finding of fact that wife was not bona fide resident of District for one year preceding filing of her complaint as required by this section. *Id.*

13. Law applicable

When Congress has enacted a complete set of divorce and marriage laws for the District of Columbia, it is to these laws, rather than to those preserved out of the past relationship with the State of Maryland, that must be looked to for guidance and control in the determination of a question. *Hoage* v. *Murch Bros. Constr. Co.* (1931, 50 F. 2d 983, 60 App. D.C. 218).

14. Locus of acts

Where the parties are residents of the District and sue for a divorce for acts committed therein it is not error to introduce evidence showing acts of cruelty commenced in another jurisdiction and culminating in this District. *Creel* v. *Creel* (43 App. D.C. 82).

Where offense was committed beyond the District of Columbia plaintiff must affirmatively aver in the bill, and prove as a fact at the trial, a bona fide residence here for a period of three years; and such averment and proof is jurisdictional. *Winston* v. *Winston* (1921, 271 F. 551, 50 App. D.C. 321).

15. Permanency of residence

Where parties were married in Virginia on June 27, 1953, in October, 1956 while they were living in West Virginia they separated, wife remained there until November 1, 1956, when she came to District of Columbia having obtained employment there, she had been working and living there continuously ever since and paid taxes in the District as her home, wife was resident of District for more than two years prior to filing of her suit for divorce on grounds of desertion notwithstanding that for a while wife was willing to resume marital relations with husband out of District if and when he provided a satisfactory home for her, which he never did, since the law did not require that wife when she moved to District intended to remain in District permanently. *Heater* v. *Heater* (D.C. Mun. App. 1959, 155 A. 2d 523).

In action by husband for divorce on ground of wife's desertion in Virginia where husband had formerly lived with wife, testimony of husband, who had moved to District of Columbia more than two years prior to commencement of action, that husband did not intend to make his home permanently in District because his employer was transferring him back to Virginia in near future did not, by itself, deprive trial court of jurisdiction and trial court erred in dismissing complaint for lack of jurisdiction. *Jones* v. *Jones* (D.C. Mun. App. 1957, 136 A. 2d 580).

16. Residence

One who was married in the District of Columbia and resided there for 14 years does not lose such residence by temporarily residing in another state, without intending to abandon the domicile here. *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323).

Naval officer who was born and lived in Washington, D.C., may obtain divorce in that jurisdiction although he was a registered voter in New Jersey. *Dennett* v. *Dennett* (1934, 71 F. 2d 975, 63 App. D.C. 252).

In wife's action for divorce where proof showed that parties were married in the District of Columbia in October 1939, and had obtained license upon representation that both resided there, and husband had lived in the District continuously since 1935, and testified that he meant to remain in District so long as he could work and make a living, and there was no evidence that husband had a fixed and definite intent to return to state of his former residence, proof showed that plaintiff was a "bona fide resident" of the District for the year preceding the filing suit for divorce. *Rogers* v. *Rogers* (1942, 130 F. 2d 905, 76 U.S. App. D.C. 297).

Persons are "domiciled" in the District of Columbia who live there and have no fixed and definite intent to return and make their homes where they were formerly domiciled. *Id.*

Under this section "residence" means "domicile" *Rogers* v. *Rogers* (1942, 130 F. 2d 905, 76 U.S. App. D.C. 297). See, also, *Koonin, next friend of Hornsby* v. *Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309; *Jones* v. *Jones* (D.C. Mun. App. 1957, 136 A. 2d 580); *Adams* v. *Adams, Jr.* (D.C. Mun. App. 1957, 136 A. 2d 866).

Where wife, suing for divorce, had been absent from her former home in District of Columbia since 1923, in meantime she had been in China, Massachusetts, and New York, and had recently voted in New York and had continued to reside in New York City, but she testified that she had never abandoned her domicile in the District of Columbia, in deciding the issue of fact with regard to her intention, the court properly gave substantial weight to all of the facts. *Metcalf* v. *Metcalf* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

In action by husband for divorce, finding that husband had been for the required period a bona fide resident of the District of Columbia was not clearly erroneous. *Jeffe* v. *Jeffe* (App. D.C. 1946, 152 F. 2d 24).

Plaintiff could not at the same time qualify as a legal voter of New York and sue for divorce in the District of Columbia as a resident of the city of Washington. *Moritz* v. *Moritz* (D.C. Sup. 1948, 80 F. Supp. 267).

For purposes of this section providing that no divorce shall be decreed in favor of any person who has not been

a bona fide resident of the District for at least two years next before the application therefor for any cause which shall have occurred out of District and prior to residence therein, the term "residence" means domicile. *Heater* v. *Heater* (D.C. Mun. App. 1959, 155 A. 2d 523).

District of Columbia Court of General Sessions did not have jurisdiction of suit for annulment of marriage brought by husband who became a resident only about three months before the complaint was filed. *J. A. Gullo* v. *M. A. Gullo etc.* (D.C. App. 1963, 192 A. 2d 126).

"Residence" as used in statute concerning granting of a divorce or annulment of a marriage means "domicile". *Id.*

§ 16–903. Decree annulling marriage.

A decree annulling the marriage as illegal and void may be rendered on any of the grounds specified by sections 30–101 and 30–103 as invalidating a marriage. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–402 (Mar. 3, 1901, ch. 854, § 965, 31 Stat. 1345).

A minor change was made in phraseology.

CROSS REFERENCES

Alimony pendente lite, see § 16–911.

Legitimacy of issue, see §§ 16–907 to 16–910.

Marriage may be decreed void, grounds, see § 30–102.

NOTES TO DECISIONS UNDER PRIOR LAW

Fraud 1
Jurisdiction 2
Legislative intent 3
Lunatic 4
Parties 5

1. Fraud

Fraud in its procurement will vitiate the contract upon which marriage is based as well as any other contract, and will justify its annulment by the courts. *Lenoir* v. *Lenoir* (24 App. D.C. 160).

2. Jurisdiction

The court of the domicile of the parties has jurisdiction to annul a marriage contracted elsewhere, but, in determining whether such a decree will be rendered, the court of the forum will be governed by principles of marriage law of state which, under the appropriate conflicts of law rule, determine validity of marriage in question, and marriages in violation of strong "public policy" of the domiciliary state can be declared void in a proceeding there. *Hitchens* v. *Hitchens* (1942, 47 F. Supp. 73).

3. Legislative intent

Plain purpose of the law is to prohibit divorce or annulment of marriage upon the mere statement of one of the parties without corroborative evidence. *Lenoir* v. *Lenoir* (24 App. D.C. 160).

4. Lunatic

A person who has been allured or entrapped into a marriage with an insane person is not required to procure an adjudication of such insanity in an independent proceeding before he or she could be permitted to institute a suit directly for the annulment of the marriage. *Mackey* v. *Peters* (22 App. D.C. 341).

5. Parties

Proceeding in equity on behalf of a lunatic to annul a marriage contracted during infancy is properly brought by his next friend; however, the committee should be made a party defendant. *Mackey* v. *Peters* (22 App. D.C. 341).

§ 16–904. Grounds for divorce, legal separation and annulment.

(a) A divorce from the bond of marriage or a legal separation from bed and board may be granted for:

(1) adultery;

(2) desertion for two years;

(3) voluntary separation from bed and board for five consecutive years without cohabitation; or

(4) final conviction of a felony involving moral turpitude and sentence for not less than two years to a penal institution that is served in whole or part.

A legal separation from bed and board may also be granted for cruelty; and where a final decree of divorce from bed and board is or has been granted and the separation of the parties continues or has continued for two years after date of decree, the decree may be enlarged into a decree of absolute divorce from the bond of marriage upon application of the innocent spouse.

(b) Marriage contracts may be declared void where:

(1) the marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved;

(2) the marriage was contracted during the lunacy of either party, unless there has been voluntary cohabitation after the lunacy, or was procured by fraud or coercion;

(3) either party was matrimonially incapacitated at the time of marriage and the incapacity has continued; or

(4) either party had not arrived at the age of legal consent to the contract of marriage, unless there has been voluntary cohabitation after coming to legal age, but only on the action of the party not capable of consenting.

(Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–403 (Mar. 3, 1901, ch. 854, § 966, 31 Stat. 1345; Aug. 7, 1935, ch. 453, § 1, 49 Stat. 539).

Changes are made in phraseology or arrangement.

CROSS REFERENCE

Co-respondents must be made parties defendant and served with process as other defendants, see § 16–917.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Admissibility of evidence

In wife's action for annulment of marriage on ground of husband's matrimonial incapacity, psychiatrist who had examined husband should have been permitted to answer question as to whether husband was matrimonially incapacitated at time of marriage as result of phychogenic causes, notwithstanding that his diagnosis as to husband's impotence would rest largely upon history and symptoms described to him by husband. *Kaufman* v. *Kaufman* (1948, 164 F. 2d 519, 82 U.S. App. D.C. 397).

2. Adultery

Foundation principle underlying connivance, and essential to its establishment, is that plaintiff must have consented, either expressly or impliedly, to the adultery. *Bateman* v. *Bateman* (42 App. D.C. 230).

Husband's suspicions of wife, his failure to put obstacles in her way, and his desire for divorce did not amount to "connivance", so that finding that wife committed adultery without her husband's connivance was based on sufficient evidence. *Shima* v. *Shima* (1942, 130 F. 2d 809, 75 U.S. App. D.C. 370).

3. Amendment of complaint

Where husband sued wife for absolute divorce on ground of voluntary separation but evidence pointed to constructive desertion on part of wife and uncontradicted evidence seemed to justify divorce for desertion, husband was entitled to amend complaint to conform to evidence showing desertion. *Slone* v. *Slone* (D.C. Mun. App. 1957, 134 A. 2d 585).

4. Annulment

In proceedings to annul a void marriage, especially where it is so declared by statute, the rule of pari delicto and the equitable principle of "clean hands" are inapplicable, since in such cases the State becomes a third party. *Simmons* v. *Simmons* (1927, 19 F. 2d 690, 57 App. D.C. 216, 54 A.L.R. 75).

5. Antenuptial agreement

Agreement prior to and at time of marriage that purpose of marriage was to give child born legal name and that if parties were not satisfied with marriage, divorce could be obtained, did not constitute "collusion" in legal sense and did not bar husband from obtaining divorce on ground of voluntary five years' separation. *L. R. Davis, Jr.* v. *A. L. Davis* (D.C. App. 1963, 191 A. 2d 138).

Agreement prior to entering into marriage that parties may voluntarily separate, end marriage, and be divorced, is nothing more than recognition of rights given by statute and is not contrary to law. *Id.*

6. Application defined

Residence requirement of this section providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in this section dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion". *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

7. Burden of proof

In divorce suit based on voluntary separation for five years, party contending that a voluntary separation ceased to be voluntary has burden of proving that contention. *Bowers* v. *Bowers* (1944, 143 F. 2d 158, 79 U.S. App. D.C. 146).

8. Capacity

Matrimonial incapacity as result of impotence as ground for annulment may be result of psychogenic causes as well as result of physical defects. *Kaufman* v. *Kaufman* (1948, F. 2d 519, 82 U.S. App. D.C. 397).

In action by husband for annulment of marriage on ground that his wife was incapable of entering into married state due to psychogenic causes, evidence was insufficient to sustain finding that failure to consummate marriage was due to stubborn disposition on part of wife to deny husband matrimonial intercourse. *Jwaideh* v. *Jwaideh* (D.C. Mun. App. 1958, 140 A. 2d 303).

9. "Cohabitation" construed

"Cohabitation," as used in statute specifying as a ground for divorce voluntary separation without cohabitation, means sexual intercourse, and therefore wife who lived separately from her husband for five consecutive years but who engaged in sexual relations with him approximately once a month during such period could not be granted a divorce on ground of voluntary separation. *G. B. Dottelis* v. *M. S. Dottelis* (D.C. Mun. App. 1962, 187 A. 2d 128).

10. Common-law marriage

Evidence that the parties never expressly agreed to be husband and wife, and that the defendant made a promise to marry the plaintiff which he never kept, was insufficient to establish a common-law marriage. *M. M. Toye* v. *Leo A. Toye* (D.C. Mun. App. 1961, 170 A. 2d 778).

Where ceremonial marriage of parties was void because it occurred before annulment of husband's former marriage to another had become final, but the parties continued their cohabitation after the annulment became final, there was a valid common law marriage, and wife was not entitled to annulment because of the invalidity of the ceremonial marriage. *Utterback* v. *Utterback* (1947, 71 F. Supp. 231).

Action to annul ceremonial marriage on ground that at time of marriage, annulment of husband's prior marriage to another had not become absolute, was required to be considered in the light of the fact that the District of Columbia was a common law marriage jurisdiction. *Id.*

11. Consent

Consent necessary to bar a divorce for desertion must be found in some affirmative conduct by complainant amounting to a participation in the conduct of the opposite spouse; silent acquiescence or mere acceptance of fixed determination to leave or failure to object to departure or to exert physical force or other importunity to prevent departure do not constitute "consent". *Betty L. Marcey* v. *Melvin L. Marcey* (D.C. Mun. App. 1957, 130 A. 2d 918).

In wife's action for divorce on ground of husband's desertion for more than two years, evidence warranted finding that wife did not consent to husband leaving home of parties even though she did not make an affirmative protest. *Id.*

12. Construction

There is no provision in this section which permits the application of the doctrine of revival after condonation prior to institution of suit for divorce. *Stea* v. *Stea* (1949, 83 F. Supp. 625).

13. Corroboration

In husband's suit for divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, ruling requiring corroboration of plaintiff's testimony was erroneus. *Moore* v. *Moore* (D.C. Mun. App. 1957, 135 A. 2d 643).

Where husband sued wife for absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation and husband's testimony supported allegations of the complaint, trial

court's dismissal of complaint on ground that such testimony was without corroboration constituted reversible error. *Henderson* v. *Henderson* (D.C. Mun. App. 1957, 134 A. 2d 581).

In uncontested divorce action by husband on ground of five years voluntary separation from wife, corroboration of husband's testimony that he and his wife had not cohabited for five years was unnecessary. *Weber* v. *Weber* (D.C. Mun. App. 1957, 134 A. 2d 323).

Corroboration of husband's testimony that wife deserted him was not necessary as a matter of law in action by husband for divorce on ground of desertion. *Stevens, Jr.* v. *Stevens* (D.C. Mun. App. 1957, 134 A. 2d 111).

Corroboration of testimony is not required in divorce action. *Johnson* v. *Johnson* (D.C. Mun. App. 1957, 134 A. 2d 109).

In an uncontested action for absolute divorce alleging desertion, where plaintiff's evidence tended to prove constructive desertion, corroboration of plaintiff's testimony was not required. *Brett* v. *Brett* (D.C. Mun. App. 1957, 133 A. 2d 927).

14. Cruelty

Mental cruelty as well as physical cruelty must be such as to endanger and impair the wife's health. *Kimmel* v. *Kimmel* (1949, 171 F. 2d 340, 84 U.S. App. D.C. 177).

"It is difficult to lay down any definite rule as to what constitutes cruelty within the provisions of this statute. It is clear, we think, that it is not necessary that the conduct be limited to such physical treatment as would endanger life or health. * * * The conduct of the offending party, in the absence of assault, may be such as to make life intolerable and thereby amount to such cruel treatment as to justify a decree of separation. * * * It is sufficient if the evidence, in the absence of physical violence, establishes conduct which creates a state of mind which operating upon the physical system produces bodily injury." *Waltenberg* v. *Waltenberg* (1924, 298 F. 842, 54 App. D.C. 383). See, also, *Snow* v. *Snow* (48 App. D.C. 448, certiorari denied 39 S. Ct. 492, 250 U.S. 641, 63 L. Ed. 1185).

Evidence did not establish cruelty warranting a divorce. *Trice* v. *Trice* (1925, 5 F. 2d 543, 55 App. D.C. 328).

"Cruelty" may be shown, without physical violence, but not by mere incompatibility. *Taylor* v. *Taylor* (1934, 67 F. 2d 582, 62 App. D.C. 316). See, also, *Holt* v. *Holt* (1935, 77 F. 2d 538, 64 App. D.C. 280).

A limited divorce may be granted for cruelty. *Helvestine* v. *Helvestine* (1937, 89 F. 2d 970, 67 App. D.C. 121).

False accusations of adultery, maliciously made, without probable cause or reasonable grounds for belief, and producing requisite degree of anguish, suffering, and danger to health constitute sufficient cause to warrant limited divorce for "cruelty". *Bostick* v. *Bostick* (D.C. Mun. App. 1960, 163 A. 2d 817).

Cruelty within divorce statute must depend largely on circumstances of each case. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

15. Decisions of District Court

The Court of Appeals for the District of Columbia would accord great weight to findings of District Court in a divorce action. *Cocci* v. *Cocci* (1951, 185 F. 2d 898, 88 U.S. App. D.C. 43).

16. Definitions

While statute does not declare length of time drunkenness, cruelty, or desertion must continue, "there is no difficulty in arriving at the legal definition of the terms employed." *Maschaur* v. *Maschaur* (23 App. D.C. 87).

17. Denial of intercourse

"The wife's denial to the husband of matrimonial intercourse is not, of itself, ground for divorce." *Underwood* v. *Underwood* (1921, 271 F. 50 App. D.C. 323).

18. Desertion

"Desertion" means a voluntary separation of one party from the other without justification, with no intention to return and the absence of consent of connivance of other party. *W. Mitchell* v. *W. R. Mitchell* (D.C. App. 1963, 194 A. 2d 828).

In absence of two year statutory period of continued, uninterrupted desertion by wife, judgment for absolute divorce granted to husband on ground of desertion was improper. *Id.*

Decree granting legal separation ended possibility of a charge of further or continuing desertion against the wife. *Id.*

Evidence justified denial of divorce to the wife on the ground of desertion. *G. R. Bowles* v. *C. H. Bowles* (D.C. Mun. App. 1962, 178 A. 2d 434).

Wife was entitled to divorce on ground of desertion where husband had left, more than two years before initiation of action, for no good or stated reason and without wife's consent. *V. Gaskins* v. *F. L. Gaskins* (D.C. Mun. App. 1961, 175 A. 2d 783).

Right of wife to divorce on ground of desertion was not lost; although, more than four years after husband left, she did not offer to mend situation by taking him back. *Id.*

Testimony of wife, corroborated in part, that husband left, taking most of his belongings, and did not say where he was going, that she could not locate him, and that about two months later he came to get rest of belongings and told her she could get divorce but did not say where he was going, was not inherently incredible. *Id.*

Where trial court which granted husband divorce on ground of desertion made no specific finding of fact as to whether it had been purpose and intent of husband, in entering into separation agreement, to consent or acquiesce in separation, case would be remanded for proper consideration of issue. *Lort* v. *Lort* (1952, 198 F. 2d 598, 91 U.S. App. D.C. 118, 34 A.L.R. 2d 951).

One unjustifiably deserted need not seek a reconcilement. *Underwood* v. *Underwood* (1921, 271 F. 553, 50 App. D.C. 323).

Ill temper and differences over financial matters are not sufficient to justify desertion. "Acts justifying desertion must be such as would support a decree for divorce." *Id.*

"No definite period of desertion is prescribed. Intent, therefore, plays an important part in determining the question. While actual separation and intention to desert must exist together to constitute desertion, it is apparent that they need not be identical in their commencement. Thus, if the departure antedates the intention to desert, the period of desertion dates from the time such intention was formed (*Hitchcock* v. *Hitchcock* (15 App. D.C. 81)), while if the intention to desert antedates the departure, the period commences to run from the time of the latter." *Moncure* v. *Moncure* (1922, 278 F. 1005, 51 App. D.C. 292). See, also, *Blandy* v. *Blandy* (20 App. D.C. 535).

The present law of the District authorizes absolute divorce for desertion. *Atkinson* v. *Atkinson* (1936, 82 F. 2d 847, 65 App. D.C. 241).

An unrevoked separation agreement in the absence of other circumstances bars a divorce on the ground of desertion but where other circumstances are present, the agreement becomes merely one of the factors to be considered and the question must be determined upon its merits in each case. The important consideration is whether the separation of the parties was consented to or acquiesced in by the innocent party, who except for such consent or acquiescence would have been privileged to secure a divorce upon the ground of desertion. *Parks* v. *Parks* (1938, 98 F. 2d 235, 68 App. D.C. 363).

Desertion for a period before the passage of this act may be added to time subsequent, before institution of absolute divorce proceedings, to make up the two years provided for herein. *Richardson* v. *Richardson* (1940, 112 F. 2d 19, 72 App. D.C. 67).

Dismissal of wife's action for divorce on ground of desertion was unauthorized where husband, without wife's consent, left home following a quarrel and wife had done nothing which would justify a divorce by husband and had unsuccessfully urged husband to return. *Miller* v. *Miller* (1940, 114 F. 2d 596, 72 App. D.C. 348).

Generally, a husband is guilty of "desertion" if he lives apart from wife without her consent, unless wife is guilty of acts which would justify a divorce. *Id.*

Where separation of husband and wife occurred in February, 1936, but full and complete marital relations were reestablished in February, 1940, and the reestablished relation was again terminated after February 23, 1940, alleged desertion of wife was not continuous for a period of more than two years next preceding the commencement of

action by husband for absolute divorce on September 10, 1940, and therefore complaint was required to be dismissed. *Bledsoe* v. *Bledsoe* (1942, 43 F. Supp. 784).

Wife, who did not prove that conduct of husband amounted to cruelty which would warrant a limited divorce on that ground, was not entitled to absolute divorce on ground that by reason of husband's conduct she was forced to leave him and that husband therefore was guilty of constructive desertion. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

Under this section allowing innocent party an absolute divorce in case of desertion for two years, word "desertion" contemplates a voluntary separation without justification or an intention to return, and without consent or connivance on part of other party; the separation and intent must concur to meet requirements of desertion. *Betty L. Marcey* v. *Melvin L. Marcey* (D.C. Mun. App. 1957, 130 A. 2d 918).

19. Drunkenness

Cruelty resulting from excessive drinking, which will justify a spouse in leaving the other and thereby make the other guilty of constructive desertion, will justify a limited divorce. *R. W. Potts* v. *J. H. Potts* (D.C. Mun. App. 1961, 171 A. 2d 263).

When facts show occasional instances, within the three years, of disgusting and sometimes protracted intoxication, it falls short of establishing the state of habitual drunkenness required by the statute. *Acker* v. *Acker* (22 App. D.C. 353).

20. Enlargement of final decree

Where separation continued for more than two years since the date of the separation decree, but prior to an application of enlargement for a final decree of divorce, the parties resumed marital relations and thereafter the relationship was again severed and more than two years elapsed before the filing of the application herein, the motion for absolute divorce is not available as a basis because separation had not continued for two years since the date of such decree. *Stea* v. *Stea* (1949, 83 F. Supp. 625).

21. Felony involving moral turpitude

Violation of the Harrison Act, although said act was passed as an exercise of the government's taxing power, involved control of narcotics and was a felony involving moral turpitude within meaning of this section. *Menna* v. *Menna* (1939, 102 F. 2d 617, 70 App. D.C. 13).

Where husband was convicted on plea of guilty to charge of obtaining money by false pretenses with intent to defraud and was sentenced to imprisonment for maximum of three years, and he began serving sentence and did not appeal, and seven months after conviction, wife brought suit for absolute divorce under this section authorizing divorce in case of final conviction of a felony involving moral turpitude, and a week after husband was served in divorce action he filed in criminal case a motion for new trial, it could not be said as a matter of law that husband, by lodging motion for new trial in criminal case, destroyed right of wife to divorce. *Katz* v. *Katz* (D.C. Mun. App. 1957, 136 A. 2d 261).

22. Foreign decree

When petitioner presented to the Virginia court the grounds on which he sought release, gave notice to the respondent of the suit, and when she appeared, especially as she maintains and raised the question whether he had standing to sue, it would be unreasonable to hold that his domicile in Virginia was not sufficient to entitle him to obtain a divorce having the same force in the District as in that State. *Davis* v. *Davis* (1938, 59 S. Ct. 3, 305 U.S. 32, 83 L. Ed. 26).

Virginia decree, lawfully obtained, constitutes a valid divorce a vinculo, entitled to full faith and credit in the Supreme Court of the District when there drawn in question. *Bloedorn* v. *Bloedorn* (1935, 76 F. 2d 812, 64 App. D.C. 199).

Divorce obtained in Maryland on grounds not recognized in the District, which was the matrimonial domicile, would be held valid. *Atkinson* v. *Atkinson* (1936, 82 F. 2d 847, 65 App. D.C. 241).

A divorce obtained by a person legally domiciled in the District who leaves it and goes into a state solely for the purpose of obtaining a divorce and with no purpose of residing there permanently, is invalid, and the District, being the bona fide residence, may forbid the enforcement within its borders of a decree of divorce so procured. *Sears* v. *Sears* (1937, 92 F. 2d 530, 67 App. D.C. 379).

23. Fraud

Concealing pregnancy at time of marriage, fraud. *Lenoir* v. *Lenoir* (24 App. D.C. 160). See, also, *Alexander* v. *Alexander* (36 App. D.C. 78).

24. Husband's choice of domicile

Generally, a husband has the right to choose the place where the family will live; and if the husband acts reasonably, the unjustified failure or refusal of wife to follow him is desertion, which, if it persists for statutory period of two years, is grounds for divorce. *Snyder* v. *Snyder* (D.C. Mun App. 1957, 134 A. 2d 587).

25. Insanity

This section authorizing divorce for voluntary separation for five consecutive years requires that continued separation depend upon the continued intention, so that a period of insanity suffered by the wife must be excluded in computing the statutory period. *Dorsey* v. *Dorsey* (1952, 195 F. 2d 567, 90 U.S. App. D.C. 284).

26. Jurisdiction

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 33, 104 U.S. App. D.C. 311).

27. Laches and estoppel

Wife's delay of 21 years after separation before her first demand for support did not constitute laches barring her from permanent alimony in husband's divorce acton on ground of five years' voluntary separation, in absence of showing of prejudice to husband, where wife had wished to be independent but her health deteriorated, and particularly where, during 12 of those years, she was mentally incompetent. *J. N. Samuels, Jr.* v. *D.C. Samuels* (D.C. Mun. App. 1961, 173 A. 2d 214).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Ruppert* v. *Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Id.*

Generally suits to annul marriages on ground of incapacity must be brought within a reasonable time after discovery of defect, and if action is not instituted promptly it will be barred by laches. *Jwaideh* v. *Jwaideh* (D.C. Mun. App. 1958, 140 A. 2d 303).

Where husband discovered wife's incapacity to enter into married state due to psychogenic causes within a year following marriage, but after initial treatment parties did nothing more to correct the trouble until some six years later, husband's action for annulment of marriage was barred by laches. *Id.*

28. Legislative intent

Congress intended by the enactment of 1935 (§§ 16-401, 16-403, 16-409, 16-421) to liberalize and enlarge the divorce laws of the District of Columbia, both as to existing and prospective conditions. *Tipping* v. *Tipping* (1936, 82 F. 2d 828, 65 App. D.C. 222).

In passing the act of August 7, 1935 (§§ 16-401, 16-403, 16-409, 16-421), it was the intention of Congress to lib-

eralize the grounds for divorce. *Helvestine* v. *Helvestine* (1937, 89 F. 2d 970, 67 App. D.C. 121).

The purpose of liberalizing amendment to divorce statute was to permit termination of law of certain marriages which have ceased to exist in fact. *Vanderhuff* v. *Vanderhuff* (1944, 144 F. 2d 509, 79 U.S. App. D.C. 153). See, also, *Boyce* v. *Boyce* (1946, 153 F. 2d 229, 80 U.S. App. D.C. 355).

29. Legitimacy

While the courts of the District will refuse a husband or wife relief from a remarriage willfully contracted in violation of the laws of the District, and will not enforce the obligations of the marital status so assumed, if such enforcement will result in benefit or advantage to the wrongdoer only, judicial cognizance may be taken of such status in order to preserve and protect the rights of children and innocent persons. *Olverson* v. *Olverson* (1924, 293 F. 1015, 54 App. D.C. 48).

The courts do not look with favor on the construction of a law, if not unavoidable, which declares children illegitimate. *Thomas* v. *Murhpy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

30. Limited divorce

Under particular circumstances the trial court should grant a limited divorce although there is no specific prayer for such decree. *O'Neil* v. *O'Neil* (1924, 299 F. 914, 55 App. D.C. 40).

31. Lunatic

Suit to annul marriage of lunatic may be filed by next friend, and need not be filed by his committee, although in such case the committee should be made a defendant. *Mackey* v. *Peters* (22 App. D.C. 341).

32. Maintenance

To entitle a wife, seeking a limited divorce, to a temporary allowance for maintenance, she must live separate and apart from her husband. *Cooper* v. *Cooper* (1940, 30 F. Supp. 151).

Where parties enter into a ceremonial marriage and live together for 19 years, the wife, having every right to assume that her former husband from whom she had heard nothing for more than 10 years before her marriage was dead, may sue for separate maintenance upon separation. It could not be presumed that the former husband had remained alive for the 30 years, and the circumstances would establish a common-law marriage upon the death of the former husband in case he was alive at the time of the second ceremonial marriage. *Williams* v. *Williams* (1940, 33 F. Supp. 612). See, also, *Parrella* v. *Parrella* (1940, 33 F. Supp. 614).

33. Medical services

Municipal court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly judgment obtained by physician for professional services rendered to wife against husband must be dismissed. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

34. Period of desertion

A limited divorce may not be granted on ground of desertion for period of less than two years. *Scott* v. *Scott* (D.C. Mun. App. 1958, 140 A. 2d 312).

35. Pleading

A suit for a limited divorce and alimony or, in the alternative, for separate maintenance, states two causes of action, distinct not only in the nature of the relief sought but also in the statutory causes for which it may be granted. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

36. Presumptions

That wife, in good faith continually attempted to bring about reconciliation from beginning of separation until 18 months later gave rise to a presumption, applicable in husband's action for divorce on grounds of five years' voluntary separation, that wife's continued efforts during five year period relied on had also been in good faith. *Roberts* v. *Roberts* (1955, 222 F. 2d 408, 95 U.S. App. D.C. 382).

Where wife voluntarily left husband and there was no evidence or contention that wife afterwards changed her mind and wished to return, law presumes that she did not wish to do so. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

37. Prima facie case

In action by husband for divorce on ground of desertion on theory that wife refused to accompany him to new residence, even though action was uncontested, because testimony raised an inference of possible justification of wife's conduct, husband had burden of making out at least a prima facie case and explaining away any apparent justification for wife's conduct. *Snyder* v. *Snyder* (D.C. Mun. App. 1957, 134 A. 2d 587).

38. Prior decree

Where wife, on November 2, 1953, obtained a limited divorce, on ground of husband's desertion, which court found began June 2, 1948, and continued more than two years, and on January 29, 1954, husband brought action for divorce on ground of voluntary separation for five consecutive years, husband's action was barred by the 1953 decree, since desertion and voluntary separation cannot exist at the same time, and there was therefore not a voluntary separation of five years when husband brought action. *Pratt* v. *Pratt* (1957, 240 F. 2d 639, 99 U.S App. D.C. 401).

39. Prior divorce invalid

In wife's divorce action, husband's motion for new trial on ground that wife's divorce decree from another was invalid because of fraud perpetrated on court in respect of wife's residence presented a "question of fact" and decision granting new trial was not so wanting in evidential support as to be arbitrary. *Ruppert* v. *Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

A divorce to a husband in Virginia being invalid, his subsequent marriage was void, his wife acquired no rights, nor his children, except to have their legitimacy declared. *Frey* v. *Frey* (1932, 59 F. 2d 1046, 61 App. D.C. 232).

40. Proceedings

A proceeding for absolute divorce may be either by a new suit or by a petition in an old suit for a limited divorce in which the defendant has been brought in by rule to show cause. *Stern* v. *Stern* (D.C. Sup. 1948, 80 F. Supp. 266).

41. Purpose

The purpose of this section making voluntary separation from bed and board for five consecutive years ground for divorce is to permit termination in law of marriages which have ceased to exist in fact. *Hawkins* v. *Hawkins* (1951, 191 F. 2d 344, 89 U.S. App. D.C. 147).

42. Question of fact

In divorce proceeding, question whether as result of conduct of husband wife suffered requisite impairment of health to justify granting of divorce on ground of cruelty was question of fact. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

43. Recrimination

Recrimination is not an absolute bar to a divorce. *Vanderhuff* v. *Vanderhuff* (1944, 144 F. 2d 509, 79 U.S. App. D.C. 153).

A husband's invalid marriage to another did not preclude husband and lawful wife from ending their separation and resuming life together, and the remarriage was immaterial to action for divorce by husband under five-year provisions of this section, since recrimination is no longer a defense to a divorce suit. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

44. Remarriage

District law, forbidding remarriage of guilty party (provision subsequently eliminated from law by amendment) to divorce, does not render invalid subsequent remarriage in Florida. *Loughran* v. *Loughran* (1934, 54 S. Ct. 684, 292, U.S. 216, 78 L. Ed. 1219, rehearing denied 54 S. Ct. 861, 292 U.S. 615, 78 L. Ed. 1474).

A remarriage elsewhere in disregard of the statute, even when both parties remained domiciled in the District, is not void ab initio, but, at most, voidable, and a voidable marriage cannot be annulled after death of either spouse. *Id.*

Provision that after divorce for adultery the innocent party only may remarry was eliminated by 1935 amendment. *Thomas* v. *Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

45. Separation agreement

Order, dismissing wife's complaint because of belief that separation agreement barred right to absolute divorce on ground of two years' desertion, was reversed and cause remanded for new trial. *E. S. Coles* v. *W. W. Coles* (D.C. App. 1964, 200 A. 2d 193).

Evidence supported finding that wife had acted voluntarily in entering into separation agreement with husband, who was suing for divorce on ground of 5-year voluntary separation and who had made lengthy negotiations with wife's lawyer who had thereafter prepared the agreement. *R. C. Clement* v. *H. G. Clement* (D.C. Mun. App. 1962, 179 A. 2d 433).

The validity of separation agreement depended on whether it was fairly and voluntarily made, if intended as complete and final settlement, and if so made, it was binding and barred further claims by wife. *B. LeBert-Francis* v. *M. P. LeBert-Francis* (D.C. Mun. App. 1961, 175 A. 2d 602).

Evidence sustained finding that husband had, by his acts as well as by execution of separation agreement with his wife, confirmed and consented to separation already existing between parties, and did not carry his burden, showing desertion. *G. N. Keller* v. *D. W. Keller* (D.C. Mun. App. 1961, 171 A. 2d 511).

Generally, an unrevoked separation agreement, in absence of other circumstances, bars a divorce on ground of desertion, but where other circumstances appear, agreement becomes one of factors to be considered and question must be determined upon the merits, important considerations being whether separation of parties was consented to or acquiesced in by innocent party who except for such consent or acquiescence would have been privileged to secure divorce on ground of desertion. *Lort* v. *Lort* (1952, 198 F. 2d 598, 91 U.S. App. D.C. 118, 34 A.L.R. 2d 951).

If parties to a marriage separated by agreement without cohabitation for more than eight years under the old law and one month under the new law, the actual status of the parties should be recognized and the separation be regarded as a ground for divorce rather than require separation should continue for four years and eleven months more before a divorce could be granted. *Tipping* v. *Tipping* (1936, 82 F. 2d 828, 65 App. D.C. 222).

46. Separation from bed and board

Husband and wife who, though they sometimes eat at the same table, never eat together with any decent degree of socialibility are "separated from board" within meaning of this section making separation from bed and board for five consecutive years ground for divorce. *Hawkins* v. *Hawkins* (1951, 191 F. 2d 344, 89 U.S. App. D.C. 147).

Sharing a "board" within meaning of this section connotes eating together with some decent degree of sociability. *Id.*

The fact that husband and wife, after separation, continued to live under the same roof and shared in the use of the same dining table did not establish that there was no "separation from bed and board," where they did not occupy the same room and alternated in the use of the table to avoid friction. *Boyce* v. *Boyce* (1946, 153 F. 2d 229, 80 U.S. App. D.C. 355).

Legal separation from bed and board is authorized for various grounds including cruelty. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 277, 71 App. D.C. 26).

Under this section as amended in 1935, a divorce a mensa et thoro establishes a permanent status which can be changed only by revocation of the decree or by absolute divorce for cause arising since the decree or by the enlargement of the decree into a decree of absolute divorce upon the application of the innocent spouse. *Parks* v. *Parks* (1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556, 73 App. D.C. 93).

The phrase "legal separation from bed and board" is a synonymous term with divorce a mensa et thoro. *Maschaur* v. *Maschaur* (23 App. D.C. 87).

Divorce a vinculo matrimonii is final, while separation from bed and board is only a partial divorce. *Id.*

47. Standard of proof

That wife, who was sued by husband for desertion, failed to substantiate her counterclaim for divorce for husband's constructive desertion on basis that his cruelty had forced her to leave did not entitle husband to absolute divorce because wife admitted leaving marital abode. *J. M. Stephenson* v. *V. Stephenson* (D.C. App. 1963, 191 A. 2d 248).

1935 Amendments to Code did not lesson standard of proof required to sustain divorce on one of statutory ground. *Id.*

Admissions of both counsel at end of trial, in which both husband and wife sought divorce on ground of desertion, that neither party objected to the other's obtaining divorce on ground of desertion did not lend strength to proof of desertion of either side. *Id.*

Willingness of parties to have bonds of matrimony severed is not substitute for evidentiary showing required to establish statutory grounds for divorce. *Id.*

48. Status of divorce from bed and board

A judgment of divorce from bed and board in the District of Columbia leaves the parties in the continuing status of husband and wife, with inherent possibility that a further motion for absolute divorce will be made, and the action therefore remains open for further action as though it were an equity injunction. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

49. Sufficiency of evidence

In husband's divorce action on ground of five years' voluntary separation, evidence whether wife's attempts to effect a reconciliation during five year period relied on had been in good faith did not support finding that separation had been voluntary. *Roberts* v. *Roberts* (1955, 222 F. 2d 408, 95 U.S. App. D.C. 382).

Evidence sustained judgment denying husband a divorce under this section. *Butler* v. *Butler* (1946, 154 F. 2d 203, 81 U.S. App. D.C. 26).

Evidence, consisting of wife's uncontradicted testimony as to husband's impotence at time of marriage, corroborated by record of prior annulment suit against husband in which a former wife obtained an annulment upon ground of fraudulent misrepresentation of his matrimonial capacity, was sufficient to require judgment of annulment on ground of matrimonial incapacity. *Kaufman* v. *Kaufman* (1948, 164 F. 2d 519, 82 U.S. App. D.C. 397).

Evidence justified denial of limited divorce for cruelty to either husband or wife. *O'Neal* v. *O'Neal* (1948, 80 F. Supp. 538).

There was sufficient evidence to find cruelty, taking into consideration that appellant was and is an admittedly nervous woman. *Kimmell* v. *Kimmell* (1949, 171 F. 2d 340, 84 U.S. App. D.C. 177).

A wife seeking a divorce under the District Code is not required to live separate and apart from the husband further than to segregate herself from him so as to avoid condoning acts which she charges as the basis for divorce. The essential thing is not separate roofs but separate lives so as to abandon with apparent permanency of intention the relation of husband and wife. *Hurd* v. *Hurd* (1950, 179 F. 2d 68, 86 U.S. App. D.C. 62).

That the parties to a divorce continue their residence in the same dwelling is merely a fact which is evidentiary on the question as to whether they are living together as husband and wife. *Id.*

Where appellant attacked a limited divorce granted for cruelty upon the ground of insufficient evidence, and testimony showed no physical violence or abuse and no evidence that the wife's health had suffered by reason of husband's mistreatment and neglect, the charge of cruelty was not proved and the judgment awarding the divorce should be reversed. *Moore* v. *Moore* (1950, 179 F. 2d 38, 86 U.S. App. D.C. 16).

The evidence was sufficient to support the granting of a limited divorce for cruelty in favor of appellee. *Reilly* v. *Reilly* (1950, 182 F. 2d 108, 86 U.S. App. D.C. 345, certiorari denied 71 S. Ct. 90, 340 U.S. 865, 95 L. Ed. 632).

In action for divorce by wife who alleged that by reason of her husband's conduct which amounted to cruelty she was forced to leave him and that he therefore was

guilty of constructive desertion, evidence sustained finding that wife's health was not affected by husband's conduct. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

In action by wife for a limited divorce on grounds of cruelty and for maintenance for support of herself and five minor children of the marriage, evidence supported judgment denying divorce but granting wife separate maintenance and custody. *Divers* v. *Divers* (D.C. Mun. App. 1957, 134 A. 2d 332).

50. Termination of decree

Final divorce decree, which changes the fundamental relationship of parties, terminates wife's right to receive alimony under a preceding separation decree predicated on her status as a wife. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Id.*

51. Vacation of residence

Where court denied limited divorce for cruelty to either party, and wife purchased residential property with her own funds, and continued presence of the husband therein constituted a threat to wife's health, and the parties had already voluntarily separated, court would compel the husband to move from the residence upon the petition of the wife. *O'Neal* v. *O'Neal* (1948, 80 F. Supp. 538).

52. Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley, etc.* v. *Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

To establish ground for divorce under this section plaintiff must prove that spouse had affirmatively agreed to separation through its duration, that spouse had silently acquiesced during period relied upon, or that spouse did not actually in good faith manifest a desire to continue marriage relation, thus justifying a conclusion of acquiescence. *Roberts* v. *Roberts* (1955, 222 F. 2d 408, 95 U.S. App. D.C. 382).

Marriages which, because of long separation, have ceased in fact to exist, may, for that reason, be legally ended only where separation has been continuously voluntary on part of both parties for statutory period. *Id.*

Where separation of wife and husband was voluntary originally, and shortly thereafter wife was committed to mental institution as insane, time spent by wife in the institution could not be counted as time spouses were voluntarily separated so as to entitle husband to an absolute divorce on ground that spouses were voluntarily separated for five years notwithstanding that wife in visits to her home manifested no change of attitude regarding the separation. *Dorsey* v. *Dorsey* (1952, 195 F. 2d 567, 90 U.S. App. D.C. 284).

Evidence that husband and wife, while continuing to live in the same house, had for twenty years occupied separate bedrooms, had no marital relations or social life together and, though they sometimes ate together, did not speak to each other, established voluntary "separation from bed and board" as ground for absolute divorce. *Hawkins* v. *Hawkins* (1951, 191 F. 2d 344, 89 U.S. App. D.C. 147).

Where husband and wife for twenty years occupied separate bedrooms, had no marital relations or social life together and did not speak to each other, in absence of anything to suggest that they did not intend to do what they did and regardless of whether they knew the legal effect of their conduct, their separation was "voluntary" within meaning of this section making voluntary separation from bed and board for five consecutive years ground for divorce. *Id.*

In divorce action evidence was insufficient to establish that wife had during the statutory five year period made any effort to get in touch with her husband so as to effect a reconciliation, and therefore separation of parties must be deemed to have been voluntary within meaning of this section. *Cocci* v. *Cocci* (1951, 185 F. 2d 898, 88 U.S. App. D.C. 43).

In divorce action, whether conversations which wife stated she had with her husband did occur, and whether they constituted substantial efforts on her part, made in good faith to effect a reconciliation, as bearing on whether 5 years' separation of husband and wife was voluntary within this section, were questions of fact. *Farish* v. *Farish* (1951, 185 F. 2d 425, 87 U.S. App. D.C. 329).

This section authorizing divorce on voluntary separation for five years without cohabitation, retroactively applied, was valid. *Tipping* v. *Tipping* (1936, 82 F. 2d 828, 65 App. D.C. 222). See, also, *Parks* v. *Parks* (1941, 116 F. 2d 556, 73 App. D.C. 93).

Record justified decree awarding husband absolute divorce on ground of five years' voluntary separation, notwithstanding wife had previously obtained limited divorce or separation, with maintenance, in New York, on ground, among others, of cruelty which made it unsafe and improper for her to cohabit with her husband. *Clemens* v. *Clemens* (1944, 143 F. 2d 24, 79 U.S. App. D.C. 116, certiorari denied 65 S. Ct. 76, 323 U.S. 736, 89 L. Ed. 590).

The fact that separation resulted from husband's fault was not a defense to husband's suit for absolute divorce under this section. *Parks* v. *Parks* (1941, 116 F. 2d 556, 73 App. D.C. 93).

Where husband deserted wife, without cause, on April 18, 1932, and parties did not live together thereafter, and husband filed suit on May 6, 1938, for absolute divorce, and wife, although wishing that husband would return, silently acquiesced in separation, husband was entitled to divorce, since wife's asquiescence made separation "voluntary", within less than a year after it began, within contemplation of this section. *Id.*

That wife had obtained a limited divorce from husband did not prevent husband from subsequently obtaining an absolute divorce on ground of separation or of voluntary separation. *Id.*

A separation agreement signed by husband and wife after husband deserted wife was no defense to husband's suit for absolute divorce where separation had been voluntary for more than five years before commencement of suit. *Id*

A deserted spouse need not make attempts to end the separation in order to obtain a divorce, and even actual unwillingness on her part to take the deserter back does not prevent her from obtaining a divorce. *Id.*

A husband was entitled to divorce on ground of voluntary separation for five years, where separation was originally voluntary on both sides and wife failed to establish that her subsequent requests that husband return to her were made in good faith. *Bowers* v. *Bowers* (1944, 143 F. 2d 158, 79 U.S. App. D.C. 146).

Under this section authorizing divorce for voluntary separation for five consecutive years, divorce is authorized if both parties voluntarily and continuously acquiesce in separation during five years, even though separation was not originally voluntary on both sides. *Id.*

Under this section authorizing divorce for voluntary separation for five consecutive years, divorce is unauthorized if either party does not voluntarily and continuously acquiesce in separation during five years, even though separation was originally voluntary on both sides. *Id.*

Under this section authorizing absolute divorce on ground of five years' voluntary separation without cohabitation, if wife's leaving of husband was influenced by unkindness or even cruelty that is immaterial under this section, since provocation or justification for an act is not to say that the act is involuntary. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

When separation is continued more than five years and neither party has tried to end it, a divorce should be granted. *Id.*

Husband's silent acquiescence in continued separation made the separation "voluntary" in the statutory sense less than six months after it began. *Id.*

For plaintiff to be entitled to a divorce under this section, it must be established that the separation was voluntary at the outset, or that the defendant's silent acquiescence made the separation voluntary, in the statutory sense. *Butler* v. *Butler* (1946, 154 F. 2d 203, 81 U.S. App. D.C. 26).

Where husband and wife after separation continued to occupy separate rooms under the same roof, but had no marital relations, and ate at different times, although using the same table, and husband silently acquiesced therein for more than five years, wife was entitled to divorce under this section on ground of voluntary separation from bed and board for five consecutive years without cohabitation. *Boyce* v. *Boyce* (1946, 153 F. 2d 229, 80 U.S. App. D.C. 355).

Under provision of this section authorizing an absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, where the separation was not voluntary on part of wife for the full term of five consecutive years, fact that the court also found that the parties for all practical purposes had been unmarried since 1939 did not entitle the husband to a divorce. *Martin* v. *Martin* (1947, 160 F. 2d 20, 82 U.S. App. D.C. 40).

Under provision of this section authorizing an absolute divorce on the ground of voluntary separation from bed and board for five consecutive years without cohabitation, "voluntary" connotes an agreement and unless the parties agreed to live apart, separation is not voluntary. *Id.*

This section authorizing divorce for voluntary separation for five consecutive years requires a physical separation plus a mental disposition which gives a voluntary character to the separation, and the initial character of separation is not determinative of voluntariness of separation. *Dorsey* v. *Dorsey* (1951, 94 F. Supp. 917, affirmed 195 F. 2d 567, 90 U.S. App. D.C. 284).

Action for absolute divorce on the ground of voluntary separation for five years, brought approximately three years after defendant was granted a divorce a mensa et thoro, was premature. *Parks* v. *Parks* (1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556, 73 App. D.C. 93).

A separation for five consecutive years between husband and wife is "voluntary" under the evidence so as to entitle plaintiff to divorce notwithstanding that separation was originally caused by desertion by plaintiff husband. *Helfgott* v. *Helfgott* (1950, 179 F. 2d 39, 86 U.S. App. D.C. 409).

In action by husband for divorce on ground of voluntary separation for five years, evidence was insufficient to establish that separation of the parties, even though 20 years in duration, was voluntary on part of wife, notwithstanding the fact that in answer to an interrogatory as to whether wife was willing to attempt to effect a reconciliation with her husband, she stated that she was not so willing *Maur etc.* v. *C. Ciavarro* (D.C. Mun. App. 1959, 154 A. 2d 366).

In action by husband for divorce on ground of five years' voluntary separation, evidence sustained finding that separation had not been voluntary on part of wife after original separation. *Scott* v. *Scott* (D.C. Mun. App. 1959, 147 A. 2d 449).

53. Voluntary separation

Husband was properly denied divorce on ground of five years' voluntary separation, where trial court found, on conflicting testimony of husband and wife, that husband had failed to prove that separation was voluntary. *O. O. Taylor* v. *Lola C. Taylor* (D.C. App. 1963, 191 A. 2d 140).

In action for absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, evidence sustained finding that the parties had not been voluntarily separated from bed and board without cohabitation for the five years next preceding the filing of the complaint. *Talbert* v. *Talbert* (1955, 223 F. 2d 347, 96 U.S. App. D.C. 55).

54. Waiver

Separation agreement which required parties, in event of decree of divorce or of separation, to request no sum for maintenance, alimony, property settlement, costs or attorney fees except as provided therein, did not constitute waiver of attorney's fees to wife's counsel in husband's unsuccessful divorce action. *G. N. Keller* v. *D. W. Keller* (D.C. Mun. App. 1961, 171 A. 2d 511).

§ 16–905. Revocation of decree of divorce from bed and board.

The court may revoke its decree of divorce from bed and board at any time, upon the joint application of the parties to be discharged from the operation of the decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–404 (Mar. 3, 1901, ch. 854, § 969, 31 Stat. 1345).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Repeal

The 1935 amendment to sections 401, 403, 409, 421 of this title did not affect the repeal of this section providing for a revocation of a decree of divorce a mensa et thoro upon joint application of the parties. *Parks* v. *Parks* (1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556, 73 App. D.C. 93).

§ 16–906. Causes for absolute divorce arising after decree for separation.

Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to the second decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–405 (Mar. 3, 1901, ch. 854, § 970, 31 Stat. 1345).

A minor change is made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Enlargement of final decree

The motion for enlargement of the decree of limited divorce into one of absolute divorce is denied but without prejudice to an independent action by the plaintiff for an absolute divorce if she has grounds therefor in accordance with § 16–405. *Stea* v. *Stea* (1949, 83 F. Supp. 625).

§ 16–907. Legitimacy of issue of annulled marriage contracted while another in force.

If any marriage is declared by decree to be void because either party has a former wife or husband living, and it appears that the marriage was contracted in good faith by the other party and in ignorance of the obstacle to the marriage, the court shall so find and declare in its decree, and the issue of the marriage shall be deemed to be the legitimate issue of the parent who was capable of contracting. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–406 (Mar. 3, 1901, ch. 854, § 972, 31 Stat. 1346).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Marriage—when void

When divorce decree was obtained in Virginia through falsehood, any subsequent marriage by either party is void. *Frey* v. *Frey* (1932, 59 F. 2d 1046, 61 App. D.C. 232).

§ 16–908. Legitimacy of issue of annulled marriage with lunatic.

If a marriage is declared null and void because of the idiocy or lunacy of either party at the time of the marriage the issue of the marriage shall be deemed legitimate. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, §1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–407 (Mar. 3, 1901, ch. 854, § 973, 31 Stat. 1346).

Minor changes are made in phraseology.

§ 16–909. Legitimacy of issue of divorced marriage.

A divorce for a cause provided for by this chapter does not affect the legitimacy of the issue of the marriage dissolved by the divorce, but the legitimacy of the issue, if questioned, shall be tried and determined according to the course of the common law. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–408 (Mar. 3, 1901, ch. 854, § 974, 31 Stat. 1346).

Changes are made in phraseology.

§ 16–910. Dissolution of property rights—Jurisdiction of court.

Upon the entry of a final decree of annulment or absolute divorce, in the absence of a valid antenuptial or postnuptial agreement in relation thereto, all property rights of the parties in joint tenancy or tenancy by the entirety shall stand dissolved and, in the same proceeding in which the decree is entered, the court may award the property to the one lawfully entitled thereto or apportion it in such manner as seems equitable, just, and reasonable. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–409 (Mar. 3, 1901, ch. 854, § 974a, as added Aug. 7, 1935, ch. 453, § 3, 49 Stat. 540).

Changes are made in phraseology.

CROSS REFERENCE

Joint deposits, accounts, or safety deposit boxes, see § 26–201 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Antenuptial agreements

Under this section permitting husband and wife to retain incidents of tenancy by entireties by valid antenuptial or postnuptial agreement "in relation" thereto, property settlement agreement must be made "in relation" to property rights of parties rather than "in relation" to the divorce and consequently any agreement which preserves those property rights of parties is sufficient. *Heath* v. *Heath* (1951, 189 F. 2d 697, 89 U.S. App. D.C. 68).

2. Authority to partition property held by the entirety

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entireties. *Hogan* v. *Hogan* (1958, 250 F. 2d 412, 102 U.S. App. D.C. 87).

3. Discretion of court

Denial to wife, divorced on ground of adultery, of any share of home property held by husband and wife as tenants by entirety was not abuse of discretion. *P. C. Pearsall and R. H. Hill* v. *H. C. Pearsall* (D.C. App. 1964, 197 A. 2d 269).

Where in annulment proceedings, trial court excluded evidence of wife's contribution toward the purchase of a house and where the record shows that husband's counsel, without having offered evidence, expressly rested except for the identification of the parties, there was no error or abuse or discretion in the court's subsequent ruling that it was too late for counsel of husband to make a proffer of testimony. *Nelson* v. *Nelson* (1949, 171 F. 2d 1021, 84 U.S. App. D.C. 167).

4. Duty of court

District court has the right and duty to exercise a sound judicial discretion in adjusting the property rights of the parties. *Slaughter* v. *Slaughter* (1949, 171 F. 2d 129, 83 U.S. App. D.C. 301).

5. Inapplicability of statute

In a suit for limited divorce for cruelty, this section does not apply since its provision for apportionment relates only to property in which a tenancy, joint or by entireties, dissolves through a decree for absolute divorce or nullity of marriage. *Reilly* v. *Reilly* (1950, 182 F. 2d 108, 86 U.S. App. D.C. 345, certiorari denied 71 S. Ct. 90, 340 U.S. 865, 95 L. Ed. 632).

6. Jurisdiction

This section does not deprive district court of jurisdiction to determine ownership of property in District of Columbia formerly held in tenancy by entirety by persons divorced by a foreign decree, there being no agreement or other decree respecting the property. *Scholl* v. *Scholl* (1946, 152 F. 2d 672, 80 U.S. App. D.C. 292).

Where ownership of house, proceeds from its occupancy under lease executed by defendant, and disposition of furniture were issues presented by complaint for divorce, but defendant pleaded that she had been granted an absolute divorce from plaintiff by a foreign decree, court had jurisdiction to resolve disputed ownership of rents and furniture notwithstanding court dismissed action for divorce because of foreign divorce decree. *Id.*

Where decree in proceeding for annulment of marriage incorporated by reference purported property settlement agreement which defendant claimed provided for alimony, error, if any, was in decreeing a sum over and above amount of property settlement itself, and such error, if any, did not oust court of jurisdiction to enter the decree. *Moran* v. *Moran* (1947, 160 F. 2d 925, 82 U.S. App. D.C. 107).

7. Procedure

This section permitting a husband and wife to retain ceeding should have power to award or apportion property owned jointly is concerned solely with matters of procedure and not with substantive powers of court. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

8. Property rights

Ordinarily, decree forfeiting wife's interest in entireties property because of adultery is effective as of date of its entry, unless it expressly provides earlier date. *M. Schultze* v. *G. H. Schultze* (1962, 300 F. 2d 917, 112 U.S. App. D.C. 162).

Decree forfeiting wife's interest in entireties property because of adultery was effective as of date of Maryland divorce judgment, which found adultery and on basis of which forfeiture was directed, although forfeiture decree did not fix date of effect. *Id.*

Wife whose interest in entireties property was declared forfeited because of adultery was not entitled to share in rents accruing after effective date of forfeiture, nor to conveyance of one-half of property. *Id.*

Where property was conveyed to husband and wife as joint tenants and they entered into separation agreement providing that real estate jointly owned by parties should thereafter remain as joint property of parties in joint tenancy, conveyance using words creating joint tenancy actually gave husband and wife tenancy by entireties and incidents of tenancy by entirety would be retained after dissolution of marriage by reason of separation agreement, notwithstanding fact that separation agreement referred to estate as property held in joint tenancy. *Heath* v. *Heath* (1951, 189 F. 2d 697, 89 U.S. App. D.C. 68).

This section permitting a husband and wife to retain the incidents of a tenancy by the entirety after their marriage is dissolved if they so agreed but terminating such estate in the absence of agreement and authorizing court to award or apportion property involved applies to property settlement agreement when foreign divorce has been obtained. *Id.*

This section providing that, upon entry of divorce decree, property rights of parties in joint tenancy or tenancy by the entirety shall stand dissolved and court shall have power to award or apportion property does not empower court to award wife an interest in property owned by husband alone. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Where wife has interest in husband's property, court in divorce proceeding may adjudicate property rights and award wife the property which belongs to her. *Id.*

Under this section, giving the court the right to adjudicate the title to property held in common, the court did not abuse its discretion in awarding to the husband, on his application for divorce, sole ownership of real estate which was purchased from a joint account established by him, the wife having been guilty of breaching the marriage vows. *Richardson* v. *Richardson* (1940, 112 F. 2d 19, 71 App. D.C. 26).

While the court has the right and duty to exercise a sound judicial discretion in adjusting the property rights of the partics, it is an abuse of discretion, upon awarding the husband a divorce, to fail to award to the husband ownership of property when the wife furnished no part of the money necessary to acquire the property and has completly forfeited her interest in it by failure to live up to the marriage covenants. *Oxley* v. *Oxley* (1947, 159 F. 2d 10, 81 U.S. App. D.C. 346).

District Court for District of Columbia had power in annulment proceeding to settle property rights of parties even if there had been no agreement between parties. *Moran* v. *Moran* (1947, 160 F. 2d 925, 82 U.S. App. D.C. 107).

It does not necessarily follow that the court would have abused its discretion if it had awarded appellant more than the amount she had contributed to the purchase of the house, and there was certainly no abuse thereof in limiting her to that amount. *Slaughter* v. *Slaughter* (1949, 171 F. 2d 129, 83 U.S. App. D.C. 301).

Property conveyed to spouses by entireties can be ordered partitioned or sold, or disputes can otherwise be adjudicated, by District Court for District of Columbia in cases where limited divorce decree is in existence; and, likewise, property held by entireties can be awarded in part, or in its totality, to one tenant, depending upon facts, evidence, etc., in case; and District Court has such power of partition or award even though divorce was granted by Municipal Court. *Hipp* v. *Hipp* (1960, 191 F. Supp. 299).

District Court for District of Columbia had power to determine property rights of divorced parties after entry of foreign divorce. *Curles* v. *Curles et al.* (1956, 136 F. Supp. 916, affirmed 241 F. 2d 448, 100 U.S. App. D.C. 43).

Where realty owned by husband and wife as tenants by the entirety was not referred to in final divorce decree, and wife died before decree could become effective to terminate marriage by expiration of six months, the proceedings in divorce action abated by death of plaintiff, and divorce court would not determine whether husband was entitled to property as sole surviving tenant by entirety or whether on entry of decree the husband and wife became owners as tenants in common with interest of wife passing to her heirs at law on her death *Brown* v. *Brown* (1951, 97 F. Supp. 237).

This section giving Domestic Relations Branch of Municipal Court, on grant of an absolute divorce, power to award property held by parties jointly or by entireties to one or the other of the parties, or to apportion it, was not applicable to wife's claim against her husband for individual property. *Posnick* v. *Posnick* (D.C. Mun. App. 1960, 160 A. 2d 804).

Under amendment to section 11–762 of Domestic Relations Branch Act, giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, Domestic Relations Branch of Municipal Court has authority, on granting a limited divorce, to award, or partition the property, real or personal, held by the parties jointly or by entirety, in the same manner in which it may act on granting an absolute divorce. *Id.*

9. Review

Where trial court could not properly have awarded wife an interest in husband's property in divorce case unless wife had an interest in property, and reviewing court could not ascertain from findings and conclusions whether that was the case, the portion of award relating to that property was set aside and case remanded for further findings. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Where divorce case was being remanded on issue of award to wife of an interest in husband's property and it appeared that District Court might desire to change allowances as to alimony and counsel fees, reviewing court would not pass on award with respect to those matters. *Id.*

Where evidence was conflicting in suit for divorce, Municipal Court of Appeals for the District of Columbia would not be justified in reversing findings of Municipal Court for the District of Columbia, Domestic Relations Branch, which had opportunity to hear witnesses and observe their demeanor. *Bostick* v. *Bostick* (D.C. Mun. App. 1960, 163 A. 2d 817).

10. Sufficiency of evidence

An award of real property to plaintiff wife in divorce proceeding on finding that she had purchased the property from proceeds of sale of a lot and premises, title to which was in her name and which she had previously purchased out of her own funds was sustained by the evidence. *Bilsborough* v. *Bilsborough* (1947, 160 F. 2d 933, 82 U.S. App. D.C. 115).

11. Tenancy by the entirety

Where husband and wife held realty as tenants by the entirety, and wife obtained a decree of absolute divorce that did not expressly deal with realty, and wife died five months and four days after decree was signed so that decree did not become final, divorce proceedings were properly declared abated under statutes of District of Columbia, and daughter of the deceased wife was not entitled to an interest in the realty by descent on ground that the wife was a tenant in common thereof at time of her death. *Wesley* v. *Brown* (1952, 196 F. 2d 859, 90 U.S. App. D.C. 351).

§ 16–911. Alimony pendente lite—Suit money—Enforcement—Custody of children.

During the pendency of an action for divorce, or an action by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court may:

(1) require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she is the plaintiff or the defendant, and enforce any order relating thereto by attachment and imprisonment for disobedience;

(2) enjoin any disposition of the husband's property to avoid the collection of the allowances so required;

(3) if the husband fails or refuses to pay the alimony or suit money, sequestrate his property and apply the income thereof to such objects; and

(4) determine who shall have the care and custody of infant children pending the proceedings.

(Dec. 23, 1963, 77 Stat. 56, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–410 (Mar. 3, 1901, ch. 854, § 975, 31 Stat. 1346; June 30, 1902, ch. 1329, 32 Stat. 537).

Changes are made in phraseology.

Cross References

As to use of habeas corpus in connection with custody of children, see § 16–1908.

Orders for support of feeble-minded person enforceable as decrees for temporary alimony, see § 32–616.

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1. In general

Court may award alimony pendente lite without passing on merits of litigation. *Sparks* v. *Sparks* (25 App. D.C. 356). See, also, *Lesh* v. *Lesh* (21 App. D.C. 475).

Suit to set aside divorce and for maintenance in personam, and wife may not create jurisdiction by seizure of property and notice by publication. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

This section purports to authorize an award pendente lite only as incident to a suit for divorce or one for annulment. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

2. Abatement

Divorce action abated upon wife's death, and, therefore, court lacked power to compel surviving husband to pay wife's counsel fees for services prior to wife's death. *B. F. Fitzgerald, Jr., et ano.* v. *M. Williams* (D.C. Mun. App. 1961, 170 A. 2d 777).

3. Absconding husband

This section authorizes the rendering and enforcement of personal decrees for temporary alimony and it may well be extended to include the case of an absconding husband when the matrimonial domicile of husband and wife is within jurisdiction of the court. *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3).

4. Annulment

When suit was for the annulment of the marriage, and not for a divorce, the court might allow alimony pendente lite, but it had no power to award to the defendant permanent alimony. *Alexander* v. *Alexander* (36 App. D.C. 78). See, also, *Payne* v. *Payne* (1924, 295 F. 970, 54 App. D.C. 149).

5. Basis for commitment

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Lundergan* v. *Lundergan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *Id.*

6. Collection after dismissal

Installments of alimony pendente lite previously accruing are collectible after entry of a final judgment dismissing action for divorce. *Cole* v. *Cole* (1946, 67 F. Supp. 134, reversed on other ground 161 F. 2d 883, 82 U.S. App. D.C. 155).

7. Contempt

Divorced husband's remarriage and acquisition of second set of children whom he must support and the attainment of majority by children of first marriage did not justify refusal to hold husband in contempt for failure to pay monthly installments which divorce decree required husband to pay for support of wife and children of first marriage. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

A wife's delay in seeking to enforce payment of alimony does not destroy or affect the husband's obligation to obey the court's order, and that obligation does not depend upon the payee's diligence in trying to collect, and contempt is shown by an inexcusable failure to pay what the court ordered and is not limited to a failure to pay sums which the wife promptly demands. *Id.*

8. Costs and counsel fees

Award of counsel fees to unsuccessful wife in divorce action is discretionary. *M. M. P. Ritz* v. *B. A. Ritz* (D.C. App. 1964, 197 A. 2d 155).

It requires extremely strong showing to convince reviewing court that award of counsel fees to unsuccessful wife is so arbitrary as to constitute abuse of discretion. *Id.*

In determining amount of award of counsel fees to unsuccessful wife in divorce suit, trial court is not bound by any mathematical computation of time consumed multiplied by some hourly rate. *Id.*

In determining amount of award of counsel fees to unsuccessful wife in divorce action, consideration should be given to many factors, including quality and nature of services performed, necessity for such services, results obtained from services, and husband's ability to pay. *Id.*

Trial court did not abuse its discretion in awarding unsuccessful wife only $1,500 as counsel fees, though divorce trial lasted eight days. *Id.*

"Without regard to whether or not the wife succeeds in her litigation, we think that under section 975 of the Code (this section) she is entitled to reasonable attorney's fees for services rendered in prosecuting her case and to costs of the suit." *Towson* v. *Towson* (1919, 258 F. 517, 49 App. D.C. 45).

Counsel fees of a husband who was plaintiff in divorce proceedings cannot be allowed against the corespondent. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

The wife was entitled to present her case, and the court may compel a husband to pay counsel fee for the wife, while refusing because of her misconduct to compel the payment of alimony. *Myers* v. *Myers* (1925, 4 F. 2d 300, 55 App. D.C. 224).

Although there had been no lawful marriage between the parties, either under the statutes or at common law, because plaintiff had a legal husband living, the court was authorized to require defendant to pay a reasonable counsel fee to plaintiff's counsel for their services. *Tendler* v. *Tendler* (1926, 12 F. 2d 831, 56 App. D.C. 296, certiorari denied 47 S. Ct. 96, 273 U.S. 637, 693, 71 L. Ed. 843).

The fact that the court found against the wife did not affect the rightfulness of the allowance for counsel fees. *Friedenwald* v. *Friedenwald* (1927, 16 F. 2d 509, 57 App. D.C. 13).

Order for "suit money" could not be entered after divorce suit had abated by reason of the plaintiff's death. *Bailey* v. *Scott* (1927, 18 F. 2d 184, 57 App. D.C. 142).

The court is not required to hear and pass upon the evidence relating to the final issues involved before granting

allowance to wife for suit money and counsel fees. *Martin* v. *Martin* (1927, 18 F. 2d 823, 57 App. D.C. 173).

Counsel fees to wife in divorce proceedings; enforced by contempt proceedings. *Boardman* v. *Carey* (1933, 65 F. 2d 600, 62 App. D.C. 152).

Upon dismissal of complaint the allowance of costs and counsel fees is within the discretion of the trial court. *Shellman* v. *Shellman* (1938, 95 F. 2d 108, 68 App. D.C. 197).

Where husband appealing from judgment in divorce action granting a divorce to husband but giving custody of two children to wife and awarding wife alimony, counsel fees, and suit money, filed notice of appeal on June 27, 1940, and on July 2, 1940, the husband filed a supersedeas bond, the district court had jurisdiction on that date, to enter an order allowing suit money and counsel fees to wife in respect of appeal. *Jaffe* v. *Jaffe* (1942, 124 F. 2d 233, 74 App. D.C. 394).

If counsel for wife knowingly participates to husband's injury in wife's wrongful or inequitable conduct in connection with a divorce suit, counsel should not be assisted by the court in collecting a fee from the injured husband. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

An attorney who conducts a wife's divorce case properly has a claim of his own against the husband for fees independent of and superior to any claim of the wife. *Id.*

Since attorney's liens are of an equitable nature, the court's action in forcing a husband to pay the fees of his wife's attorney in a divorce suit should be limited by equitable considerations. *Id.*

Where, on appeal from order denying divorced husband's motion to set aside a previous order of court appointing a sequestrator for pension payments due from District of Columbia to husband who had failed to make payments directed by divorce decree, application was made for allowance of counsel fees to wife's attorney, allowance of $200 would be reasonable. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

Where dismissing on her own motion a wife's complaint for divorce, the District court acted within its discretion in denying fees to her attorney. *Neudecker* v. *Philpot* (1949, 174 F. 2d 668, 85 U.S. App. D.C. 28).

9. Custody of children

Welfare of the child is a matter of paramount consideration at all times and under all circumstances. *Slack* v. *Perrine* (9 App. D.C. 128, error dismissed 17 S. Ct. 79, 169 U.S. 452, 41 L. Ed. 510).

Courts, looking principally to the welfare and happiness of the children, will award their care and custody to the one party or the other as will best promote child's interest and general welfare. *Wells* v. *Wells* (11 App. D.C. 392).

When custody of children is involved "the courts do not act to enforce the right of either parent, but to protect the interest and general welfare of the children." *Stickel* v. *Stickel* (18 App. D.C. 149).

Interest of infants is even paramount to the claim of both parents. *Seeley* v. *Seeley* (30 App. D.C. 391, 12 Ann. Cas. 1058, certiorari denied 28 S. Ct. 570, 209 U.S. 544, 52 L. Ed. 919).

This section authorizes the court to determine who shall have the care and custody of infant children pending proceedings for divorce. Since the court had jurisdiction of the appellant and of the subject-matter, it was his duty to obey the order, irrespective of whether or not it was erroneous. *Early* v. *Early* (1920, 261 F. 1003, 49 App. D.C. 123).

Equity will interfere to protect children from cruelty or from immoral influences, and may even deprive parents of the care of their own children. *Church* v. *Church* (1921, 270 F. 359, 50 App. D.C. 237).

Disposition of the custody of the child rests in the sound discretion of the court, subject to the rule that its welfare is the paramount thing to be considered. *Snow* v. *Snow* (1922, 280 F. 1013, 52 App. D.C. 39).

A father who is a party to divorce proceedings cannot, by contract or otherwise, avoid, or relieve himself from, his primary obligation to maintain a minor child. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

Other things being equal, a child's mother should be preferred to its grandmother in determining the matter of custody, and mother's actual custody should not be disturbed while divorce suit was pending. *Kirk* v. *Kirk* (1945, 150 F. 2d 589, 80 U.S. App. D.C. 183).

In child custody case, where district court, acting through different judges, had on four or five previous occasions found wife an unsuitable person to have custody, order requiring that custody be delivered to divorced husband was not abuse of discretion. *Steele* v. *Steele* (1948, 168 F. 2d 562, 83 U.S. App. D.C. 254).

In child custody case, either party is entitled to have his evidence presented through mouths of his witnesses rather than by affidavits. *Id.*

In child custody case, where plaintiff's counsel, in order to obtain hearing at early date and out of order, agreed to submit case on affidavits, court's refusal of request at trial to hear testimony of child, then nine years of age, was not error, not only because matter was in trial court's sound discretion, but also because to have granted request would have violated conditions on which case was set down for hearing, particularly where stenographic transcript of child's evidence given in police court was before trial court for consideration. *Id.*

10. Discretion of court

A divorced wife's motion to hold husband in contempt for failure to pay alimony should not be treated as though it were a citation for contempt, and motion should not be denied after considering husband's affidavit filed in defense, but if motion is supported by wife's affidavit showing arrearages in alimony then after notice of motion has been given to husband a hearing should be had in open court or on affidavits and counteraffidavits and court should determine whether there was deficiency and if so whether husband had shown an excuse for nonperformance sufficient to cause the court in exercise of sound discretion to refrain from punishing him. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

"The granting of alimony pendente lite is a matter within the sound discretion of the trial court." *Dunnington* v. *Dunnington* (45 App. D.C. 277). See, also, *Jacobi* v. *Jacobi* (45 App. D.C. 442).

The trial court may in its discretion award counsel fees to wife regardless of the outcome of her divorce suit, and right of wife's attorney to fees is not vitiated by wife's wrongful conduct. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

The entry of final judgment pending special appeal which challenged District Court's right to refuse to consider a motion for alimony pendente lite because movant had declined to appear before Domestic Relations Commissioner did not foreclose matter of allowance of alimony pendente lite, and refusal of motion for the reason stated having been improper, District Court had power, upon return of the case to exercise a sound judicial discretion as to whether a pendente lite allowance should be made and, if so, as to the amount. *Kernan* v. *Kernan* (1948, 165 F. 2d 232, 82 U.S. App. D.C. 382).

11. Enforcement of order

An order for alimony and attorney's fees pendente lite in a divorce proceeding is in effect a personal decree, and can only be enforced in a foreign jurisdiction after personal service upon the defendant, regardless of the statutory provisions in the state or jurisdiction where the divorce proceeding is pending. Publication may be substituted for personal service of process upon any defendant in a divorce proceeding in this District. *Johnston* v. *Johnston* (1935, 74 F. 2d 774, 64 App. D.C. 87).

Failure to make payments for maintenance of minor children not enforceable by imprisonment for contempt. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

Order requiring payments for maintenance of children is enforceable against father, who is not divorced, by imprisonment. *Ebert* v. *Ebert* (1945, 148 F. 2d 226, 80 U.S. App. D.C. 69).

In divorce action, defendant could be cited for contempt for noncompliance with maintenance order by service of motion on his counsel, since contempt proceedings are incidental to pending cause. *Id.*

After entry of final judgment dismissing wife's action for divorce, husband would be adjudged guilty of con-

tempt of court for failure to pay installments of alimony pendente lite accruing before entry of such judgment. *Id.*

This section providing that, in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

Where divorce decree directed husband to make monthly payments to wife for her maintenance and support of minor child but husband moved from District of Columbia and stopped making payments and District did not appeal from order appointing a sequestrator for pension payments due to the husband from District and was making no claim to exemption, the husband should not be permitted to make the claim of exemption. *Id.*

Under this section providing that during pendency of suit for divorce court shall have power to require husband to pay alimony to wife and to enforce obedience to order by attachment and imprisonment for disobedience, only so long as divorce suit is pending does court have authority to require husband to pay alimony and to enforce obedience by attachment and imprisonment. *Cole* v. *Cole* (1947, 161 F. 2d 883, 82 U.S. App. D.C. 155).

Failure to pay installments of alimony which had accrued under a pendente lite order could not be punished by contmpt proceedings after suit for divorce, in which temporary allowance was made, had been dismissed by order containing no reference to unpaid installments. *Id.*

12. Excuse for nonpayment of alimony

When husband shows justifiable cause for failing to comply with court order for support or willingness to pay or reduce arrearages, court, in exercise of its discretion may refrain from punishing him. *V. A. Johnson* v. *L. Johnson* (D.C. App. 1963, 195 A. 2d 406).

Burden is upon husband sought to be held in contempt for failure to make support payments to show by competent evidence a reasonable excuse for his nonperformance and where he offers no valid reason for his default, wife is entitled to aid of court in enforcement of its order by imprisonment, unless husband purges himself of arrears. *Id.*

Husband who neither offered to pay support arrearages nor presented evidence upon which court could predicate finding that he was justified in failing to comply with support order was in contempt. *Id.*

13. Exemptions

Payments of disability insurance are not exempt under § 35–717 from liability for alimony and support of divorced wife. *Schlaefer* v. *Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350, 130, A.L.R. 1014).

14. Imprisonment

Inasmuch as acknowledged father of illegitimate children did not have status of husband, his disobedience of order directing him to support children, though contemptuous, could not be punished by imprisonment. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *Lundergan* v. *Lundergan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

15. Judgment against property

Court may, in case of the husband's failure or refusal to pay such alimony and suit money, sequestrate his property and apply the income to such object but when husband does not default in paying installment of alimony when due, a writ will not lie. *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323).

An order to sequestrate property of the absent defendant, within the immediate jurisdiction of the court, is quasi in rem, issued to satisfy a personal claim on specific property. Thus the court acquires jurisdiction to render a judgment essentially in rem affecting such property, notwithstanding the absence of the owner from the state. *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3).

16. Jurisdiction of equity

Equity is ancillary and not antagonistic to the law, and where a statute precludes the authority to make an allowance, equity can not be invoked to aid in its circumvention. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

Independent of statute, a court of chancery has jurisdiction over the custody and maintenance of a minor child. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

17. Laches

Where 1936 District of Columbia divorce decree required husband to pay $75 per month for support of wife and two infant daughters, and in 1937 husband paid amount then due and subsequently paid occasional small amounts until March 22, 1940, after which date he paid nothing, and wife was ill and poor and had difficulty in obtaining counsel, and husband had resided in Maryland after the divorce, wife's delay until 1949 to file motion that husband be held in contempt for failure to pay alimony was explained and excused and did not amount to laches. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

18. Liability of husband

Decree awarding alimony pendente lite is a final order, and husband is liable therefor although he finally prevail. *Lynham* v. *Hufty* (44 App. D.C. 589).

"In a divorce proceeding the husband is primarily liable for the costs." *Id.*

19. Multiple contempt motions

That husband's failure to pay support arrearages had been held to be justifiable in one contempt proceeding did not preclude court in later contempt proceeding from finding that his continued failure to pay those arrearages was contemptuous. *V. A. Johnson* v. *L. Johnson* (D.C. App. 1963, 195 A. 2d 406).

More than one contempt motion may be brought with respect to same support arrearages. *Id.*

That delinquent husband may on one occasion justify his failure to comply with court support order does not permanently protect him from enforcement procedures available in contempt proceeding and there is nothing to prevent court, upon successive motions by wife seeking to collect same arrearages, from committing husband when he presents no mitigating circumstances justifying his continued failure to discharge them. *Id.*

20. Multiple executions

Wife seeking enforcement order for support may execute on each maturing installment as upon any other judgment for money or may seek to hold husband in contempt. *V. A. Johnson* v. *L. Johnson* (D.C. App. 1963, 195 A. 2d 406).

21. Property

In making provision for the wife's sustenance, the term "property" requires a liberal interpretation. *Schlaefer* v. *Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350, 130 A.L.R. 1014).

22. —— Subject to payment

A decree for payment of alimony against a non-resident brought before the court by constructive or extra-territorial service is void except as to property which is within the court's jurisdiction, and which has been specifically proceeded against in the divorce action. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

Order of District Court of District of Columbia directing resident of Virginia who was personally served in Virginia, to pay alimony pendente lite, was "in personam" and void for lack of jurisdiction, in absence of any acts by non-resident to subject himself to court's authority, and in absence of a claim of, right to, or lien on any personality in District of Columbia. *Id.*

23. Punishment for contempt

This section's authority to punish for contempt a failure to pay permanent alimony awarded to wife in divorce decree is not required to be invariably exercised, and when a proper defensive showing is made by a delinquent husband, such as unavoidable casualty, the court may refuse to punish him, but such refusal does not

release the delinquent from civil liability to pay the amounts which have become due. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

24. Recovery back of payments

An order for payment of alimony pendente lite is in effect a final order enforceable by immediate execution, and though it is revocable and may be rescinded by court and may wholly fall by a final decision on the merits adverse to petitioner, as long as it remains in effect to the extent to which it has been enforced by payment or execution, it is an absolute finality and money so paid cannot be recovered back. *Cole* v. *Cole* (1946, 67 F. Supp. 134, reversed on other grounds 161 F. 2d 883, 82 U.S. App. D.C. 155).

25. Repayment of unauthorized fee

Where order, denying husband's motion pending determination of referred question as to husband's damages from wife's suing out an injunction tying up husband's funds, to stay condemnation of his attached funds, for his wife's counsel fees in dismissed divorce suit, was reversed and the fees had been paid from the attached funds, the District Court would be authorized to require counsel to repay the fees if he were not entitled to retain them, notwithstanding such counsel had not been made a party to husband's appeal from the order. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

26. Sequestration of pension payments

Where divorced husband was entitled to pension payable out of Policeman's and Fireman's Relief Association of District of Columbia, divorced wife was not entitled to appointment of sequestrator to collect pension from disbursing officer of the District for payment to wife in satisfaction of her alimony claim. *Rone* v. *Rone* (1944, 141 F. 2d 23, 78 U.S. App. D.C. 369).

27. Set off

Where judgment dismissing wife's suit for divorce and taxing husband with wife's counsel fees determined neither the facts nor the law with regard to husband's right to set off, against claim for counsel fees, damages sustained by wife's suing out of an injunction tying up husband's funds, husband would be allowed to set off such damage against the claimed fees if wife's attorney knowingly participated in wrongful issuance of injunction, notwithstanding allowance of fees had become final. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

Where District Court dismissed wife's suit for divorce and taxed husband with her counsel fees, if court should find that wife's attorney knowingly participated in wrongful suing out of injunction by wife to tie up husband's funds, husband would be allowed to set off his damage from the injunction against the claim for counsel fees. *Id.*

28. Statutory policy

The policy underlying alimony statutes is not punishment for a wrongdoing husband, but is to insure that where wife is entitled to support, she will receive it and not become a public charge. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

29. Subsequent obligations

A divorced husband's voluntary assumption of new obligation by marrying a second time does not excuse him from the primary obligations imposed by the court's award of alimony to first wife. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

30. Writ of execution

An award of alimony is a judgment for money on which execution may issue, and it is perhaps convenient and certainly not improper for the court to enter a new judgment establishing of record the accrued installments which are unpaid when the wife draws the facts to the court's attention, but such procedure is not essential, and the installments which have become due are easily calculated from the terms of the original decree and a look at the calendar, and wife's application for writ of execution accompanied by her affidavit as to nonpayment should move the issuance of the writ, and if an issue is raised concerning the amount due the court can determine it. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

§ 16–912. Permanent alimony—Enforcement—Retention of dower.

When a divorce is granted to the wife, the court may decree her permanent alimony sufficient for her support and that of any minor children whom the court assigns to her care, and secure and enforce the payment of the alimony in the manner prescribed by section 16–911, and may, if it seems appropriate, retain to the wife her right of dower in the husband's estate; and the court may, in similar circumstances, retain to the husband his right of dower in the wife's estate. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–411 (Mar. 3, 1901, ch. 854, § 976, 31 Stat. 1346).

The provision for retention of the husband's right of dower in the wife's estate, in similar circumstances, is added, to conform with section 18–201a of D.C. Code, 1961 ed., which, as amended by act Sept. 14, 1961, Pub. L. 87–246, § 3, 75 Stat. 515 (Supp. II, 1963), not only restored the wife's right of dower (which had been abolished by act Aug 31, 1957, Pub. L. 85–244, § 3, 71 Stat. 560), but established a statutory right of dower in the husband as well, in the estate of his wife, and provided that all other laws in force in the District of Columbia relating to the right of dower and its incident should, on and after the effective date of such act (Mar. 15, 1962), be construed to be applicable to both husband and wife. The 1961 act also amended sections 18–101, 18–204, 18–211 and 30–201 of D.C. Code, 1961 ed. See, also, section 16–2921 et seq. of this revised Part.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Amount

An allowance to wife of permanent alimony sufficient for her support and that of the minor children whom the court may assign to her care is alimony payable to the wife and is not contingent on minority of the children. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Husband who had abandoned his wife and child and who was earning $6,000 a year was directed to pay $200 a month for the maintenance of wife and child and $500 attorney's fees. *Noffsinger* v. *Noffsinger* (1943, 50 F. Supp. 810).

In divorce suit, order requiring husband to pay wife $30 on the 6th and 21st day of each month until court's further order was clear, although court stated that payments would apply on previous New York judgment for maintenance. *Clemens* v. *Clemens* (1944, 143 F. 2d 24, 79 U.S. App. D.C. 116, certiorari denied 65 S. Ct. 76, 323 U.S. 736, 89 L. Ed. 590).

Where divorced husband's income is large, divorced wife is entitled not merely to subsistence but to maintenance in manner which station of life of parties makes

appropriate, but court should not make award so high as to cause financial difficulties and personal embarrassment on part of husband which would impair his earning capacity. *Russell* v. *Russell* (1944, 142 F. 2d 753, 79 U.S. App. D.C. 44, 153 A. L. R. 1037).

Amount of alimony award above average level of income should not be set without safeguards against improvident expenditures which impair future security of divorced wife or children. *Id.*

Alimony, when allotted, measures the husband's duty of support. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

2. Arrears

No contempt where arrears are due to personal injuries. *Caffrey* v. *Caffrey* (1925, 4 F. 2d 952, 55 App. D.C. 285).

A husband who had income of $160 per month was properly punished for contempt for failure to pay $45 per month alimony awarded to wife, where only excuse offered for alleged inability to pay alimony was that husband voluntarily contributed to support of his mother and his invalid brother and therefore had no funds with which to make the payments. *Kelly* v. *Kelly* (1943, 137 F. 2d 254, 78 U.S. App. D.C. 97).

One who has no money or tangible property may be punished for contempt for failure to pay alimony award, if he makes no honest effort, considering his physical and mental capabilities, to work and earn money to pay alimony. *Id.*

On wife's motion to adjudicate arrears of alimony, trial court acted properly in enforcing full payment of accrued alimony notwithstanding children who were minors when award was made had reached majority at time default in payment commenced. *Lockwood* v. *Lockwood* (1947, 160 F. 2d 923, 82 U.S. App. D.C. 105).

3. Award

Provision in 1901 Code, § 978 (§ 16–413) that a case where permanent alimony has been awarded under 1901 Code, § 976 (this section) shall still be considered open for any further orders operates only prospectively, and the court can not set aside or reduce sums determined and past due. *Biscayne Trust Co.* v. *American Security & Trust Co.* (1927, 20 F. 2d 267, 57 App. D.C. 251).

4. Contempt

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman* v. *Berman* (1953, 202 F. 2d 812, 92 U.S. App. D.C. 77).

Divorced husband's remarriage and acquisition of second set of children whom he must support and the attainment of majority by children of first marriage did not justify refusal to hold husband in contempt for failure to pay monthly installments which divorce decree required husband to pay for support of wife and children of first marriage. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

A wife's delay in seeking to enforce payment of alimony does not destroy or affect the husband's obligation to obey the court's order, and that obligation does not depend upon the payee's diligence in trying to collect, and contempt is shown by an inexcusable failure to pay what the court ordered and is not limited to a failure to pay sums which the wife promptly demands. *Id.*

5. Discretion of court

A divorced wife's motion to hold husband in contempt for failure to pay alimony should not be treated as though it were a citation for contempt, and motion should not be denied after considering husband's affidavit filed in defense, but if motion is supported by wife's affidavit showing arrearages in alimony then after notice of motion has been given to husband a hearing should be had in open court or on affidavits and counteraffidavits and court should determine whether there was deficiency and if so whether husband had shown an excuse for nonperformance sufficient to cause the court in exercise of sound discretion to refrain from punishing him. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

In awarding alimony, limited discretion of court is based on standards which are necessarily vague, but where income of divorced husband is small the problem only involves giving the wife a decent subsistence if it is possible. *Russell* v. *Russell* (1944, 142 F. 2d 753, 79 U.S. App. D.C. 44, 153 A.L.R. 1037).

Both award of alimony and amount to be awarded are matters placed in trial court's discretion, and exercise of such discretion will not be disturbed on appeal except for clear abuse. *Shelton* v. *Shelton* (D.C. Mun. App. 1959, 153 A. 2d 663).

Where, at time of divorce action, 47-year-old wife, who had been a school teacher elsewhere, but who was unable to qualify for such position in the District of Columbia, was unemployed and was being supported by her brother, while her 40-year-old husband was earning $4,640 a year, award of $25 per week as alimony to wife did not constitute a manifest abuse of trial court's discretion. *Id.*

6. Divorced father

Section 16–415, which defines the power of a court to make a support-money order against a husband for the benefit of a wife and minor child, does not embrace the case of an order against a divorced father. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

7. Effective date

Any allowance of alimony which is to be effective after suit for divorce has ceased to pend must be made under this section regarding permanent alimony. *Cole* v. *Cole* (1947, 161 F. 2d 883, 82 U.S. App. D.C. 155).

8. Increase of alimony

Where, in a petition for an increase in an alimony award, the petitioner alleged that she was without knowledge of the provisions of the decree awarding alimony, and that she had accepted the monthly payments provided therefor under protest, an affidavit asserting that petitioner was present in court when the decree was signed, when undenied, was sufficient to overcome petitioner's allegation that she had no knowledge of the provisions of the decree. *Moran* v. *Moran* (1940, 31 F. Supp. 227).

A claim for an increase in alimony, based on an allegation that the decree was entered by mistake, will be denied, where the motion was not made until more than six months after the judgment was taken. *Id.*

Where divorce decree required husband to pay wife $900 a month for alimony and $100 for support of one of their two children who required special schooling, award amounted to between 40 and 50 percent of husband's entire income, husband had remarried, and his position as an executive required certain standards which, if not maintained, would impair his usefulness to his employer, and pleadings indicated that his living standards were not as high as those of his divorced wife, an increase in award was not justified, even though wife was required to pay income tax on alimony which she received. *Russell* v. *Russell* (1944, 142 F. 2d 753, 79 U.S. App. D.C. 44, 153 A.L.R. 1037).

Any decrease in divorced wife's net income because of taxes or any other reason which brings it below what is necessary for her station in life may be considered in granting an increase in alimony, but increase must be based on examination of needs of wife in light of present size of divorced husband's income, not on theory of equitable tax adjustment. *Id.*

Where alimony award to divorced wife is above average level of income, the moral obligations of husband, such as obligation to his mother-in-law, by second marriage, as well as legal obligations of husband, should be considered in determining divorced wife's petition for increase in alimony. *Id.*

If divorced wife's application for increase in alimony was to be decided against husband without a hearing, all controverted issues and all legitimate inferences raised by the pleadings were required to be resolved in his favor. *Id.*

9. Laches

Where 1936 District of Columbia divorce decree required husband to pay $75 per month for support of wife and two infant daughters, and in 1937 husband paid amount then due and subsequently paid occasional small amounts until March 22, 1940, after which date he paid

nothing, and wife was ill and poor and had difficulty in obtaining counsel, and husband had resided in Maryland after the divorce, wife's delay until 1949 to file motion that husband be held in contempt for failure to pay alimony was explained and excused and did not amount to laches. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 994, 96 L. Ed. 702).

In divorce action, evidence, which revealed that wife had waited for four years after she had been deserted by husband before asserting her claim for alimony and that wife could have sued for separate maintenance immediately following the desertion but could not sue for divorce until desertion had continued for two years, was sufficient to sustain trial court's finding that wife was not guilty of laches which would bar her claim for alimony. *Shelton* v. *Shelton* (D.C. Mun. App. 1959, 153 A. 2d 663).

10. Presumptions

Where moving party comes before court asking for enlargement of a limited divorce decree and for final severance of bonds of matrimony, movant must be presumed to be requesting the full relief to which she believes herself entitled. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

11. Property rights

In absence of some right or element of ownership, legal or equitable, on part of wife in husband's property, court in divorce case is without power to order transfer of that property to her, and no such power is included in an authorization to grant alimony. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

This section authorizing court in divorce case to grant permanent alimony to wife and to retain to wife her right of dower in husband's estate does not empower court to award real property of one spouse to the other. *Id.*

12. Punishment for contempt

This section's authority to punish for contempt a failure to pay permanent alimony awarded to wife in divorce decree is not required to be invariably exercised, and when a proper defensive showing is made by a delinquent husband, such as unavoidable casualty, the court may refuse to punish him, but such refusal does not release the delinquent from civil liability to pay the amounts which have become due. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

13. Remission of installment

Decree as to alimony is final as to installments of alimony in arrears, and court cannot remit them. *Caffrey* v. *Caffrey* (1925, 4 F. 2d 952, 55 App. D.C. 285).

14. Res judicata

Order of District Court in divorce action denying motion to modify judgment confirming stipulation of parties whereby husband agreed to pay permanent alimony and determining that the stipulation was a contract but that divorce judgment approving stipulation did not award alimony was res judicata precluding relitigation of the question in the Municipal Court in a suit to enforce the stipulation. *Woodruff* v. *Woodruff* (D.C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72, 85 U.S. App. D.C. 424).

15. Review

Record on appeal in husband's divorce action did not support his contention that trial judge had used erroneous standard in computing alimony award, although judge's summary of considerations in that respect omitted certain proper considerations, there having been testimony relating to those considerations. *O. Cole* v. *E. Cole* (D.C. App. 1963, 193 A. 2d 76).

Where trial court could not have awarded wife an interest in husband's property in divorce case unless wife had an interest in property, and reviewing court could not ascertain from findings and conclusions whether that was the case, the portion of award relating to that property was set aside and case remanded for further findings. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Where divorce case was being remanded on issue of award to wife of an interest in husband's property and it appeared that District Court might desire to change allowances as to alimony and counsel fees, reviewing court would not pass on award with respect to those matters. *Id.*

16. Sequestration of pension payments

This section providing that in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

Where divorce decree directed husband to make monthly payments to wife for her maintenance and support of minor child but husband moved from District of Columbia and stopped making payments and District did not appeal from order appointing a sequestrator for pension payments due to the husband from District and was making no claim to exemption, the husband should not be permitted to make the claim of exemption. *Id.*

17. Statutory policy

The policy underlying alimony statutes is not punishment for a wrongdoing husband, but is to insure that where wife is entitled to support, she will receive it and not become a public charge. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

18. Subsequent obligations

A divorced husband's voluntary assumption of new obligation by marrying a second time does not excuse him from the primary obligations imposed by the court's award of alimony to first wife. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

19. Termination of prior alimony decree

Final divorce decree, which changes the fundamental relationship of parties, terminates wife's right to receive alimony under a preceding separation decree predicated on her status as a wife. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Id.*

20. Writ of execution

An award of alimony is a judgment for money on which execution may issue, and it is perhaps convenient and certainly not improper for the court to enter a new judgment establishing of record the accrued installments which are unpaid when the wife draws the facts to the court's attention, but such procedure is not essential, and the installments which have become due are easily calculated from the terms of the original decree and a look at the calendar, and wife's application for writ of execution accompanied by her affidavit as to nonpayment should move the issuance of the writ, and if an issue is raised concerning the amount due the court can determine it. *Kephart* v. *Kephart* (1952, 193 F. 2d 611, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

§ 16–913. Alimony when divorce is granted on husband's application.

When a divorce is granted on the application of the husband, the court may require him to pay alimony to the wife, if it seems just and proper. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–412 (Mar. 3, 1901, ch. 854, § 977, 31 Stat. 1346; June 30, 1902, ch. 1329, 32 Stat. 537).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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Waiver of appeal 7

1. Alimony award

Alimony may be awarded to a wife even though the divorce was granted on the application of the husband, if it would seem just and proper to the court. *Quarles* v. *Quarles* (1950, 179 F. 2d 57, 86 U.S. App. D.C. 41).

2. Amount of award

Where husband who was awarded a divorce on ground of wife's adultery, had a substantial business and an income of about $12,000 a year, wife, who had not been repaid $2,000 which she had advanced to husband for purchase of family home, was without means, and trial lasted five days and required considerable preparation, sums of $2,000 in cash, $50 a week alimony for support of wife and two minor children, or $75 if wife ceased to occupy husband's house free of rent, $825, in addition to $175 previously paid, as wife's counsel fees in district court, and $150 suit money and $300 counsel fees in respect of husband's appeal directed to be paid to wife by husband were reasonable. *Jaffe* v. *Jaffe* (1942, 124 F. 2d 233, 74 App. D.C. 394).

That wife's counsel represented co-respondent as well as wife in trial of husband's divorce action based on ground of adultery did not show that award to wife of $825, in addition to $175 previously paid, as counsel fees in the district court and $300 counsel fees in respect of husband's appeal were excessive. *Id.*

The record does not support the award of alimony to wife when there is no evidence that she contributed either her funds or her industry in the accumulation of the property by her husband, and no loss either financial or by way of security, or status, was suffered by reason of her marriage, and upon consideration of other compelling factors of an equitable nature. *Quarles* v. *Quarles* (1950, 179 F. 2d 57, 86 U.S. App. D.C. 41).

Judgment of the trial court in determining whether an award of alimony to a guilty defendant is just and proper will not be disturbed unless an abuse of discretion is made, manifested by the record. Evidence here was sufficient to sustain monthly payment of $65.00 for alimony. *Schulz* v. *Schulz* (1950, 179 F. 2d 59, 86 U.S. App. D.C. 43).

3. Custody of children

A court may in its discretion award custody of children to the unsuccessful defendant in a divorce action. *Jaffe* v. *Jaffe* (1942, 124 F. 2d 233, 74 App. D.C. 394).

4. Effect of agreement

Where the court did not require husband to pay alimony, but only approved an agreement by which the parties adjusted their respective property rights and all claims for alimony, the decree cannot be considered open for a future order in that respect, at least in the absence of fraud or mistake. *Heckman* v. *Heckman* (1949, 83 F. Supp. 687).

5. Retention of jurisdiction

Jurisdiction may be retained to enter further orders respecting alimony and care and custody of child. *Davis* v. *Davis* (1932, 57 F. 2d 414, 61 App. D.C. 48).

6. Scope of review

Ordinarily, the trial court's determination of the propriety of the award under all the circumstances will not be disturbed unless an abuse of discretion is shown. *Quarles* v. *Quarles* (1950, 179 F. 2d 57, 86 U.S. App. D.C. 41).

7. Waiver of appeal

Right to appeal is lost by acceptance of alimony. *Harris* v. *Harris* (1936, 89 F. 2d 829, 67 App. D.C. 85).

Where judgment granted plaintiff husband an absolute divorce but also awarded alimony and counsel fees to wife, and after entry of judgment husband paid monthly to wife the alimony as well as the counsel fees, appeal by wife was subject to dismissal upon ground that, having accepted benefits of judgment, she was precluded from appealing therefrom. *Stein* v. *Stein* (1948, 170 F. 2d 162, 83 U.S. App. D.C. 286).

§ 16–914. Retention of jurisdiction as to alimony and custody of children.

After the issuance of a decree of divorce granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders relating to those matters. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–413 (Mar. 3, 1901, ch. 854, § 978, 31 Stat. 1346).

Minor changes are made in phraseology.

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1. Arrears

Decree as to alimony is final as to installments of alimony in arrears. *Caffery* v. *Caffery* (1925, 4 F. 2d 952, 55 App. D.C. 285).

Provision in § 978 (this section) that a case where permanent alimony has been awarded under § 976 (§ 16–411) shall still be considered open for any further orders operates only prospectively, and the court can not set aside or reduce sums determined and past due. *Biscayne Trust Co.* v. *American Security & Trust Co.* (1927, 20 F. 2d 267, 57 App. D.C. 251).

2. Care and custody of children

Phrase "care and custody of children," includes maintenance, since plainly a child cannot be cared for without being fed, clothed, and otherwise maintained. *Elkins* v. *Elkins* (1924, 299 F. 690, 55 App. D.C. 9). See, also, *Evans* v. *Evans* (1941, 36 F. Supp. 12).

Marriage of a daughter may constitute a good and sufficient reason for modification of a previous order for support and maintenance. *Davis* v. *Davis* (1938, 96 F. 2d 512, 68 App. D.C. 240).

The District Court of the United States for the District of Columbia may, independently of statute, provide for care and custody of children in divorce cases. *Evans* v. *Evans* (1941, 36 F. Supp. 12).

Where the District Court of the United States for the District of Columbia acquired jurisdiction over custody and maintenance of child of parties to divorce suit, the court's jurisdiction continued for all proper purposes concerning the custody and maintenance of the child. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

After submitting themselves to jurisdiction of court in divorce proceedings, parents cannot by their agreement deprive court of power to control custody and maintenance of child. *Id.*

In divorce proceeding the court must retain a continuing jurisdiction with respect to custody and maintenance of minor child. *Id.*

A child's claim against his father for maintenance is not subsidiary to that of the mother. *Id.*

Where District Court of United States for District of Columbia granting divorce failed to make provision regarding custody or maintenance of minor child, but parties filed stipulation for maintenance and support giving mother custody but requiring father to make payments for support, fact that mother had supported the child and the child had had support did not affect the duty of the father to render it, relieve him of the burden, or deprive the court of power to compel him to discharge it or to force him to reimburse the mother for what she had expended on that account. *Id.*

Where stipuation for support of infant child was made part of record in divorce proceeding in District Court of United States for District of Columbia, the district court had continuing and exclusive jurisdiction over custody

and maintenance of child and the municipal court did not have jurisdiction of action to recover amount alleged to be due under the stipulation. *Id.*

Courts jurisdiction, having attached to child custody case, continued undisturbed to final conclusion of case. *Steele* v. *Steele* (1948, 168 F. 2d 562, 82 U.S. App. D.C. 254).

3. Counsel fees

An order for payment of counsel fees in connection with the collection of alimony and support, is an order "in those respects" within the meaning of this section, and the case was "open" for the purposes of this order. *Junghans* v. *Junghans* (1940, 112 F. 2d 212, 72 App. D.C. 129).

4. Discretion of court

Trial court has large discretion in awarding custody of minor child and cause will remain open for any further orders found to be proper. *Warner* v. *Warner* (1928, 24 F. 2d 609, 58 App. D.C. 34).

Alimony within trial court's discretion. Dependent on circumstances. *Garrett* v. *Garrett* (1963, 62 F. 2d 471, 61 App. D.C. 309).

5. Increase of alimony

Where agreement of parties incorporated in divorce decree provided for division of property and for monthly payments to wife "as maintenance for her support", although both provisions were included in same instrument, they were separable so that if parties intended monthly payments to be an alimony award, provision concerning monthly payments would be subject to modification. *Rogers* v. *Rogers* (1953, 203 F. 2d 61, 92 U.S. App. D.C. 97).

Where divorce decree incorporated agreement of husband and wife which contained provisions for division of property and monthly payments to wife "as maintenance for her support" to cease on her remarriage and court retained jurisdiction to enforce compliance with agreement and all matters pertaining thereto, but parties' intent as to whether monthly payments were alimony was not apparent from agreement, order denying, for lack of jurisdiction, motion for increase in alimony would be reversed and case would be remanded for evidence of intention. *Id.*

6. Jurisdiction of court

Where the court did not require the husband to pay alimony, but only approved an agreement by which the parties adjusted their respective property rights and all claims for alimony, the decree cannot be considered open for a future order in that respect, at least in the absence of fraud or mistake. *Heckman* v. *Heckman* (1949, 83 F. Supp. 687).

7. Modification or remission of installment

Under this section, the United States District Court for the District of Columbia cannot modify or remit installments of alimony which have become due. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S, Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

8. Proceeding in personam

Claim for maintenance is essentially a proceeding in personam and there can be no attachment, seizure, or taking of the property until after the decree has passed. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

9. Property rights

Where husband and wife's agreement incorporated in divorce decree settles only property rights, its inclusion in judgment does not confer jurisdiction to modify it. *Rogers* v. *Rogers* (1953, 203 F. 2d 61, 92 U.S. App. D.C. 97).

10. Stipulations

In divorce suit, it was duty of court to act for the protection of minor child and where parties filed stipulation, for maintenance and support of the child, it was proper to assume that the official duty of the court was performed. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

Even though stipulation for maintenance and support of child was not incorporated in divorce decree, it would be granted equal effectiveness as if it had been incorporated in decree to extent that it received the tacit approval of the court and was carried out by the parties. *Id.*

In a divorce suit where court approves stipulation for maintenance and support of child, it is better practice to incorporate stipulation into the decree. *Id.*

Court ratification and confirmation of a stipulation for permanent alimony as a contract for support and maintenance does not convert the stipulation into a decree for alimony. *Woodruff* v. *Woodruff* (D.C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72 85 U.S. App. D.C. 424).

Where stipulation for permanent alimony was ratified and confirmed by the court as a contract for support and maintenance, husband could not after stipulation was filed and submitted on behalf of both parties resist enforcement on the ground that he did not intend to be bound by the agreement. *Id.*

Stipulation for alimony whereby husband, who had deserted his wife and was under legal and moral obligation to provide for her support, agreed to pay permanent alimony in consideration of which wife refrain from seeking court award of alimony and counsel fees was amply supported by consideration. *Id.*

11. Termination of separation decree

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

The power under this section which district court has to award permanent alimony in case of a proceeding for final divorce, whether it is on original complaint or on petition for enlargement of limited decree, is discretionary with trial court. *Id.*

§ 16–915. Restoration of wife's maiden or other previous name.

In granting a divorce from the bond of marriage, the court may restore to the wife her maiden or other previous name. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–414 (Mar. 3, 1901, ch. 854, § 979, 31 Stat. 1346).

The only change is the insertion of a comma after "marriage".

§ 16–916. Maintenance of wife and minor children—Enforcement.

When a husband fails or refuses to maintain his wife and minor children, if any, although able so to do, the court, on application of the wife, pendente lite and permanently, may decree that he shall pay her, periodically, such sums as would be allowed to her as pendente lite or permanent alimony in case of divorce for the maintenance of herself and the minor children, if any, committed to her care by the court. The court may enforce the payment thereof in the same manner as directed in regard to the payment of permanent alimony. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–415 (Mar. 3, 1961, ch. 854, § 980, 31 Stat. 1346; June 20, 1949, ch. 228, 63 Stat. 213).

Minor changes are made in phraseology.

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1. In general

Under this section "the power of the court to grant separate maintenance can be exercised only where the 'husband shall fail or refuse to maintain his wife and minor children,' if any, although able so to do." *Towson* v. *Towson* (1919, 258 F. 517, 49 App. D.C. 45).

This section does not require that husband and wife live "separate and apart." *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

2. Admissibility of evidence

Proof regarding motivation of husband's conduct, justification for wife's departure from family home, and the necessity, if any, for her maintenance apart from her husband, is admissible in action of wife for separate maintenance. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

3. Amount of award

Evidence was sufficient to sustain an order of $150 per month for the support and maintenance of wife and three children. *Wedderburn* v. *Wedderburn* (1924, 295 F. 1014, 54 App. D.C. 193).

Lower court, having first obtained jurisdiction of the parties under the bill for maintenance, had the power and the right to enter a decree for maintenance and as shown in the circumstances the allowance of the amount of alimony should be sustained as a proper allowance. *Marcum* v. *Marcum* (1933, 62 F. 2d 871, 61 App. D.C. 332).

4. Arrears

An unfair burden would be imposed upon appellee if, after he had contributed directly to the support of his children and had otherwise acted in accordance with assurance that appellant wanted no money from him, he were now to be required to pay her large accumulations of arrears for maintenance. *Franklin* v. *Franklin* (1949, 171 F. 2d 12, 83 U.S. App. D.C. 385).

5. Award pendente lite

This section makes no provision for an award pendente lite as an incident to a suit for separate maintenance. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

6. Basis for award

Under statute to effect that court may award maintenance to wife if husband fails or refuses to maintain her, wife makes out prima facie case by proving husband failed to maintain her and was able to do so, but husband may offer evidence that wife left him without just cause or that separation was brought about largely or in part by wife's cruelty or act of unkindness or indignity and such proof may justify denial or abatement of maintenance. *F. L. Miller* v. *B. Miller* (D.C. Mun. App. 1962, 180 A. 2d 888).

Wife's misconduct may bar her claim from maintenance or, despite misconduct, she may be entitled to award but in lesser amount than would otherwise be awarded. *Id.*

Finding that wife, who has left husband, was justified in living separate and apart from husband should be prerequisite to award of maintenance to wife. *Id.*

7. Contempt

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *Id.*

8. Counsel fees

Wife who brought proceeding to affirm marriage and set aside foreign divorce decree was entitled to counsel fees. *E. Gherardi de Parata* v. *B. Gherardi de Parata; B. Gherardi de Parata* v. *E. Gherardi de Parata* (D.C. App. 1963, 193 A. 2d 213).

Wife's proceeding to affirm marriage and set aside foreign decree was equitable in nature and District of Columbia Court of General Sessions had power to award counsel fees to wife. *Id.*

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater that that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman* v. *Berman* (1953, 202 F. 2d 812, 92 U.S. App. D.C. 77).

The District Court has authority to award counsel fees in a wife's action for separate maintenance. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

In action by wife for separate maintenance, evidence of cruelty of husband is relevant on question of how much maintenance the husband should be required to pay. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

Wife's attorney's fee of $125 was ordered paid by husband in wife's maintenance action, where husband's income was not ample to justify more, notwithstanding services of wife's counsel warranted a higher amount. *Hodge* v. *Hodge* (1948, 80 F. Supp. 379).

9. Custody of children

In action by wife for maintenance and support, exclusive custody of minor children of the parties should not have been awarded to wife where husband and wife and the children remained living together in the same household. *R. L. Clements* v. *R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

Where first order required husband to pay wife for maintenance of children, and second order after husband and wife were divorced replaced earlier order and required husband to pay a greater amount for such maintenance, husband failing to pay the amount provided for in the second order was in contempt, but husband could not be imprisoned inasmuch as the second order was entered after the divorce. *Queen* v. *Queen* (1951, 188 F. 2d 624, 88 U.S. App. D.C. 157).

10. Discharge of order

"The amount and the continuation of the allowance will remain subject to the control of the equity court," and should the parties be reconciled or should the husband provide a suitable home and invite the wife to occupy it, the order for maintenance will be discharged. *Bernsdorff* v. *Bernsdorff* (26 App. D.C. 520). See, also, *Marschalk* v. *Marschalk* (45 App. D.C. 455).

11. Discretion of court

Broad discretionary power is vested in trial court to award maintenance to a wife when the husband has failed or refuses to support her, and if she has need thereof and he has the ability to pay, a judgment of maintenance will not be disturbed except upon a clear showing of abuse. *C. T. Rutherford* v. *E. S. Rutherford* (D.C. App. 1963, 189 A. 2d 124).

Statute providing that court may award maintenance to wife if husband has failed to support her although able to do so does not compel award but leaves it within discretion of trial court. *S. W. Foley* v. *J. D. Foley* (D.C. Mun. App. 1962, 184 A. 2d 853).

Wife's financial condition is relevant consideration and may limit award of maintenance or defeat it altogether. *Id.*

Where a bill for maintenance makes out a prima facie case, the complainant is entitled to an allowance pendente lite for support, the amount of which is within the sound discretion of the trial court. *Tolman* v. *Tolman* (1 App. D.C. 299).

Matter of granting or refusing temporary alimony is committed to sound discretion of trial court, and will not be disturbed by reviewing court, unless discretion has been abused. *Reed* v. *Reed* (1922, 280 F. 1009, 52 App. D.C. 35). See, also, *Howard* v. *Howard* (1940, 112 F. 2d 44, 72 App. D.C. 145).

In wife's suit for maintenance, awards of maintenance pendente lite and suit money were within District Court's discretion under its general equity powers. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

12. Dismissal

A motion to dismiss a complaint for maintenance was required to be denied notwithstanding defendant introduced affidavit and a supplemental answer disclosing that defendant had obtained an absolute divorce from plaintiff in Arkansas wherein he claimed to have obtained a legal residence, since court could consider only facts set forth in complaint which disclosed an existing marriage of parties who were residents of Maryland and that defendant was temporarily within the District. *Brandenburg* v. *Brandenburg* (1948, 80 F. Supp. 562).

13. Effect of award under reciprocal laws

Award for separate maintenance and support for minor children obtained under reciprocal enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figliozzi* v. *J. Figliozzi* (D.C. Mun. App. 1961, 173 A. 2d 904).

14. Effect of divorce

For purposes of jurisdiction in suits to enforce support, divorced wife is to be deemed a wife. *W. P. Christian* v. *J. C. Christian* (D.C. Mun. App. 1962, 187 A. 2d 126).

Right to support acquired by marriage is incident of marriage which survives an ex parte divorce decree. *Id.*

1951 Maryland ex parte divorce obtained by husband remained ex parte decree even though wife in 1960 attempted to vacate decree by motion which was never passed upon and which was withdrawn by consent without prejudice, and proceeding did not bar subsequent suit by wife in District of Columbia for separate maintenance. *Id.*

Where husband filed suit for divorce against wife in the District of Columbia, and wife filed a counterclaim for separate maintenance, and husband then moved to Texas and procured a divorce in Texas, court in District of Columbia properly dismissed counterclaim for separate maintenance, since there could be no award of maintenance after divorce decree became effective. *Meredith* v. *Meredith* (1953, 204 F. 2d 64, 96 U.S. App. D.C. 351).

This section defines the power of a court to make a support-money order against a husband for the benefit of a wife and minor children, but does not embrace the case of an order against a divorced father. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

15. Effect of post-divorce agreement

Post-divorce agreement providing that in consideration for payment of $5,000, husband would be discharged from all claims arising out of and during marital relationship with exception of obligation to supoprt children and that wife released all present and future claims to husband's property and all claims for alimony and support for herself, failed to extinguish rights of children to continued support and District Court had jurisdiction to determine whether support provided for children was adequate even though husband had presented a substantial showing that he had been affording children full measure of support. *Harrison et al.* v. *Harrison* (1957, 248 F. 2d 631, 101 U.S. App. D.C. 309).

Where parties had entered into post-divorce agreement providing that in consideration for payment of $5,000, husband would be discharged from all claims arising out of and during marital relationship with exception of obligation to support children and that wife released all present and future claims to husband's property and all claims for alimony and support for herself, wife had released all claims to separate maintenance for herself. *Id.*

16. Equity jurisdiction

Equity will compel a husband to support his wife, quite apart from apparent restrictions on such obligation in statute. *Meredith* v. *Meredith* (1955, 226 F. 2d 257, 96 U.S. App. D.C. 355).

United States District Court for the District of Columbia has general equity powers, which are not supplanted by this section providing that whenever any husband shall fail to maintain his wife, court, on application of wife, may order him to pay as maintenance such sums as would be allowed in case of divorce, and which are broad enough in appropriate circumstances to support a grant of maintenance after an ex parte divorce. *Hopson* v. *Hopson* (1955, 221 F. 2d 839, 95 U.S. App. D.C. 285).

This section providing that whenever any husband shall fail to maintain his wife, court, on application of wife may order him to pay as maintenance such sums as would be allowed in case of divorce, is merely a specific authorization to enter a maintenance decree and is not a limitation on court's general equitable powers to enter such a decree. *Id.*

Equity has jurisdiction to grant maintenance as an independent relief. *Rhodes* v. *Rhodes* (36 App. D.C. 261). See, also, *Lesh* v. *Lesh* (21 App. D.C. 475); *Tolman* v. *Tolman* (1 App. D.C. 299).

Where father was worth over a million dollars, $50 a month was not adequate for care and education of son of 18, custody of whom had been awarded to mother by Nevada divorce decree, and it was duty of court to compel father to provide adequate support under its general equity powers. *Schneider* v. *Schneider* (1944, 141 F. 2d 542, 78 U.S. App. D.C. 383).

Suits for maintenance have been regarded in the District as equitable rather than legal. *Franklin* v. *Frankiln* (1949, 171 F. 2d 12, 83 U.S. App. D.C. 385).

The power of the court of equity to adopt its remedial relief to existing conditions and circumstances should not be curtailed. *Id.*

17. Evidence

Sufficient competent evidence supported findings and judgment of trial court granting separate maintenance. *C. T. Rutherford* v. *E. S. Rutherford* (D.C. App. 1963, 189 A. 2d 124).

Evidence in separate maintenance action supported finding that husband's misconduct had justified wife in leaving him. *G. M. Johnson* v. *C. D. Johnson* (D.C. Mun. App. 1962 (179 A. 2d 720).

In wife's suit for maintenance, defended on ground that she had been guilty of adultery and had, accordingly, forfeited her right to support, evidence supported decree granting permanent maintenance. *Smith* v. *Smith* (D.C. Mun. App. 1957, 137 A. 2d 221).

18. Foreign decree

Decree of divorce obtained by husband in Virginia barred wife's action for maintenance in the courts of the District of Columbia. *Thompson* v. *Thompson* (1913, 33 S. Ct. 129, 266 U.S. 551, 57 L. Ed. 347).

A Texas court's decree, granting husband a divorce after dismissal of his complaint for divorce by federal District Court for District of Columbia on his motion because of his removal to Texas, did not destroy wife's personal financial right to claim maintenance, for which she filed counterclaim in District of Columbia court before filing of husband's Texas divorce suit, where wife did not appear in such suit, as Texas court had no jurisdiction over her. *Meredith* v. *Meredith* (1955, 226 F. 2d 257, 96 U.S. App. D.C. 355).

Ex parte foreign divorce procured by husband did not operate as a bar, under the full faith and credit clause, Art. 4, § 1, of the federal Constitution, to subsequent suit by wife in the District of Columbia for support and maintenance for herself and child. *Hopson* v. *Hopson* (1955, 221 F. 2d 839, 95 U.S. App. D.C. 285).

A grant of maintenance in a suit filed after an ex parte foreign divorce is consistent with the full faith and credit clause, Art. 4, § 1, of the federal Constitution. *Id.*

A Florida divorce decree obtained by husband who went to Florida solely for purpose of obtaining the divorce, and with no bona fide intention of remaining therein permanently or indefinitely, was not entitled to full faith

and credit in the District of Columbia, so as to bar wife's action for maintenance. *White* v. *White* (1945, 150 F. 2d 157, 80 U.S. App. D.C. 156).

In absence of any showing of invalidity, Florida judgment granting absolute divorce to husband barred right of wife to maintenance, notwithstanding wife had instituted suit for maintenance in District Court for District of Columbia and had obtained an order granting temporary maintenance prior to time husband instituted Florida divorce suit. *Gullet* v. *Gullet* (1945, 149 F. 2d 17, 80 U.S. App. D.C. 73). See, also, *Gullet* v. *Gullet* (1947, 71 F. Supp. 378, affirmed 174 F. 2d 531, 85 U.S. App. D.C. 12).

Where husband took 40-hour annual leave from Washington job and went to Mexico for divorce, remaining there for not more than eight days, returning to Washington before decree was signed, husband was not a bona fide resident of Mexico, and decree obtained by him was not binding on District Court for District of Columbia in wife's subsequent action for support and maintenance. *Hodge* v. *Hodge* (1948, 80 F. Supp. 379).

Maryland court's judgment of acquittal in bigamy prosecution following husband's remarriage after Mexican divorce did not settle question of validity of divorce in wife's action for maintenance brought subsequent to both Maryland judgment and Mexican divorce. *Id.*

19. Imprisonment

Inasmuch as acknowledged father of illegitimate children did not have status of husband, his disobedience of order directing him to support children, though contemptuous, could not be punished by imprisonment. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Under this section, authorizing imprisonment for enforcement of permanent maintenance and §§ 16–410, 16–411, for enforcement of alimony during pendency of divorce suit and § 11–327, permitting enforcement of interlocutory orders by same process as final decrees, court had no power to imprison husband for failure to pay awards of maintenance pendente lite and suit money, in wife's suit for maintenance. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

20. Judgment

Where wife brought action for divorce from bed and board, or, in alternative, for separate maintenance, judgment for separate maintenance was a finality as to every matter which was offered and received to sustain or defeat the case. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

A judgment for separate maintenance requires some basis for its support. *Id.*

20.50. Jurisdiction

Where mother's custody of children was not in issue, court had jurisdiction to award money for support of children residing in New York with mother against father living and employed in District of Columbia and it was error not to do so. *N. G. Sheridan* v. *G. T. Sheridan* (D.C. App. 1964, 202 A. 2d 653).

21. Legitimacy of child

The presumption of legitimacy of a child, corroborated by the mother's sworn statement that her husband, defendant in suit for maintenance, was the father of the child, and affidavits of third parties detailing circumstances strongly corroborative of the claim, is not overcome by the husband's denial of paternity, supported by the professional opinion of a physician, based on an examination of defendant more than a year later, that he was sterile at the time conception occurred. *Howard* v. *Howard* (1940, 112 F. 2d 44, 72 App. D.C. 145).

22. Maintenance as alimony

Where wife was denied a divorce because of insufficiency of her proof of cruelty, but was awarded "alimony", the "alimony" was in fact an award of "maintenance", which was within the power of the court, upon a proper showing, even though there was no ground for divorce. *Brooker* v. *Brooker* (1954, 211 F. 2d 648, 94 U.S. App. D.C. 38).

This section authorizing award of maintenance to a wife in such sums as would be allowed as permanent alimony in case of divorce assimilates maintenance, at least as regards amount, to alimony within rule that alimony is largely discretionary and may be granted to a wife who is at fault or denied against a husband who is at fault and that its amount is elastic. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

22.50. Marriage validity

Although Virginia marriage was void because one of parties thereto had just been divorced and six months' period for divorce to become final had not elapsed, a subsequent religious marriage ceremony more than a year after the divorce decree created a valid husband-wife relationship as basis for separate maintenance award. *C. L. Morse* v. *S. W. Morse* (D.C. App. 1964, 200 A. 2d 375).

In wife's suit for separate maintenance, evidence established that wife was justified in leaving the marital abode, that husband failed to support her and that $75 a month was a reasonable allowance. *Id.*

23. Measure of support

Alimony, when allotted, measures the husband's duty of support. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

24. Nonresident parties

Where parents and children were residents of Maryland and at time wife's separate maintenance suit was filed the husband was working in District of Columbia where personal service was had upon him but at time of trial he was employed in Maryland, District of Columbia court properly declined to award custody to either parent. *I. Z. Schiller* v. *C. Schiller* (D.C. App. 1963, 194 A. 2d 665).

Where wife failed to prove that husband had failed or refused to maintain her and court declined to award either husband or wife custody of children in wife's separate maintenance suit for lack of jurisdiction, court properly declined to award support for the children. *Id.*

Where complaint for maintenance states an existing marriage and that plaintiff and defendant are residents of Maryland and that defendant husband is temporarily within the District, practice is for the District Court for the District of Columbia, to take jurisdiction. *Bradenburg* v. *Bradenburg* (1948, 80 F. Supp. 562).

25. Permanent alimony

Question of permanent alimony could be judicially considered only on the granting of a divorce or on application of the wife for maintenance. *Payne* v. *Payne* (1924, 295 F. 970, 54 App. D.C. 149).

In view of this section providing for the allowance of money for the maintenance of a wife upon her application therefor whenever the husband fails or refuses to maintain her, permanent alimony may be granted in an annulment action. *Parrella* v. *Parrella* (1941, 120 F. 2d 728, 74 App. D.C. 161).

26. Proceeding in personam

When suit is for maintenance it is a proceeding in personam, and wife could not by attachment or seizure take the property until after the decree has passed. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

27. Res judicata

A judgment in prior action between same parties is res judicata on the points and matters in issue and adjudicated in such action. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

Even if subsequent action is for different cause of action, a right, question, or fact determined in prior action must, as between same parties, be taken as conclusively established, so long as judgment in prior action remains unmodified. *Id.*

Decree on wife's cross-complaint denying divorce, but allowing temporary and permanent alimony and dismissing both husband's divorce complaint and wife's cross-complaint, was not res judicata precluding subsequent action by wife for support and maintenance. *Hodge* v. *Hodge* (1948, 80 F. Supp. 379).

An issue of how much defendant should pay his wife for necessaries litigated in District Court was res judicata between husband and wife and District Court alone had the power to reopen and modify decree. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

28. Separate maintenance

A wife makes out a prima facie case for separate maintenance when she proves that her husband has failed or refused to maintain her and that he is able to do so. *I. Z. Schiller* v. *C. Schiller* (D.C. App. 1963, 194 A. 2d 665).

A husband may defeat a wife's claim for separate maintenance by showing that she left without cause or reason or that separation was brought about by her misconduct. *Id.*

Wife was not entitled to separate maintenance based on claim that husband failed to support her when she left marital abode and secreted herself so that it was impossible for husband to do so, particularly when it was admitted that prior to departure husband had supported his family commensurate with his earning ability and had remained willing to continue such support if wife returned with children to marital abode. *Id.*

Statute providing that court "may" award maintenance to wife if husband fails or refuses to support her though able to do so does not compel award but leaves it to discretion of trial judge whose judgment will not be disturbed except on clear showing of abuse. *O. S. DeSipio* v. *J. DeSipio* (D.C. Mun. App. 1962, 186 A. 2d 624).

Support may be granted to wife who is at fault, and it may in proper case be denied against husband who is at fault, and amount is elastic. *Id.*

Misconduct of wife may defeat her claim to support, but if husband asserts her misconduct as defense, he must plead and prove it. *Id.*

Though duty of husband to meet reasonable needs of wife within his financial capabilities in absolute and remains unimpaired as long as marital relationship exists, court, in enforcing obligation, must remain equally mindful of welfare of husband and avoid penalizing him by imposition of harsh financial terms. *Id.*

Court was unauthorized to deny wife all support on ground that she was presently or would very soon be in position where she could use her education and experience in gainful employment. *Id.*

Wife who was living under the same roof with her husband although refusing to share his bed was not entitled to an award of separate maintenance merely because she contributed to living expenses by purchasing groceries with money she earned, where such arrangement was voluntary, and husband paid rent, telephone, electricity, and contributed to the cost of groceries and clothing of minor children of the parties. *R. L. Clements* v. *R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

Although an award of separate maintenance may be made to a wife in fact living a separate life, although under the same roof with her husband, such situation should be given careful scrutiny to discourage litigation between husbands and wives who are actually living together. *Id.*

Wife makes out case for separate maintenance by establishing that husband failed or refused to support her, although able to do so; no allegation of cruelty is necessary. *G. M. Johnson* v. *C. D. Johnson* (D.C. Mun. App. 1962, 179 A. 2d 720).

Where evidence clearly and uncontrovertedly established that husband and wife had in fact been living separate lives though under the same roof, even though such situations generally invite careful scrutiny of courts, there was no reason to withhold an award of maintenance money to wife suing for separate maintenance. *Lutz* v. *Lutz* (D.C. Mun. App. 1960, 166 A. 2d 489).

Municipal Court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly, judgment obtained by physician against husband for professional services rendered to wife must be reversed. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

29. Sufficiency of allegations

Wife suing for limited divorce and failing to establish any dereliction on the part of the husband is not entitled to maintenance under section 980, D.C. Code of 1901 (this section). *Towson* v. *Towson* (1919, 258 F. 517, 49 App. D.C. 45).

Although cruelty was alleged in bill for maintenance on ground of failure to support, it was sufficient. *Cissell* v. *Cissell* (1933, 61 F. 2d 679, 61 App. D.C. 271).

A wife may state a cause of action for maintenance when she alleges that her husband has failed or refused to maintain her, although able to do so, and an allegation of cruelty is not necessary. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

30. Suit by nonresident wife

A suit for maintenance may be maintained by a nonresident wife against a resident husband. *Tolman* v. *Tolman* (1 App. D.C. 299).

The District Court for the District of Columbia properly accepted jurisdiction of wife's action for maintenance where the parties had lived together in the District for ten years, then moved to Maryland, just over the District line, where they lived until separation, and husband then moved back to the District, where he had since lived and worked, except for period of temporary residence in Florida, where he attempted to obtain divorce. *White* v. *White* (1945, 150 F. 2d 157, 80 U.S. App. D.C. 156).

31. Support of child

A child's claim to paternal support, unlike a claim by a wife in separate maintenance and support proceedings, is not affected by the merits of the controversy between the spouses. A father's obligation to contribute to the support of a child born of marriage is unqualified, and maintenance pendente lite for the child must be provided. *Howard* v. *Howard* (1940, 112 F. 2d 44, 72 App. D.C. 145).

A child's claim for maintenance is not subsidiary to that of the mother. *Id.*

Where domicile of father and minor son was in District of Columbia, duty imposed by this section on father to provide adequate support for his son existed in spite of Nevada divorce decree containing inadequate support provisions. *Schneider* v. *Schneider* (1944, 141 F. 2d 542, 78 U.S. App. D.C. 383).

A suit by mother as next friend of minor son is proper proceeding to enforce duty of father to provide adequate support for his minor son. *Id.*

The measure of father's duty to provide adequate support for minor son was present needs of son and ability of father to provide for him. *Id.*

§ 16–917. Co-respondents as defendants—Service of process.

In a divorce case where adultery is charged, the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–417 (Mar. 3, 1901, ch. 854, § 983, 31 Stat. 1347).

NOTES TO DECISIONS UNDER PRIOR LAW

Counsel fees 2
Defense by co-respondent 3
Identity unknown 4
In general 1

1. In general

Bill alleging adultery with two persons without making them party to suit, was not maintainable. *Nelson* v. *Nelson* (1931, 49 F. 2d 680, 60 App. D.C. 156).

2. Counsel fees

Counsel fees of husband plaintiff cannot be assessed against the co-respondent as costs. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

3. Defense by co-respondent

Quaere: Whether co-respondent can plead condonation by plaintiff. *Holden* v. *Matteson* (38 App. D.C. 128).

4. Identity unknown

It is not necessary to make co-respondent a party if his identity cannot be determined or he is known only by a fictitious name. *McLarren* v. *McLarren* (45 App. D.C. 237, 1 A.L.R. 1412).

§ 16–918. Assignment of counsel in uncontested cases—Compensation.

In all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause. The attorney shall receive such compensation for his services as the court determines to be proper, which shall be paid by the parties as the court directs. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–418 (Mar. 3, 1901, ch. 854, § 982, 31 Stat. 1374; June 20, 1949, ch. 229, 63 Stat. 213).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Compensation 1
Contempt 2

1. Compensation

Under this section authorizing Domestic Relations Court to assign counsel in uncontested cases, and providing that counsel shall receive such compensation for his services as the court determine to be proper, to be paid by parties as the court may direct, court had authority in default divorce action by wife to require fee of counsel appointed to defend to be paid by the wife, even though she was the aggrieved party and prevailed in the action. *Sutton* v. *Sutton et al.* (D.C. Mun. App. 1960, 164 A. 2d 477).

In action by wife for divorce, where husband defaulted, court appointed attorney to defend, and, after proof of case, ordered wife to pay fee of appointed attorney, and where wife failed to pay such fee for period of three months, judge notified wife's attorney that unless fee was paid within week, appointed counsel waived fee, or plaintiff filed an affidavit of impecuniosity, action would be dismissed, and fee was not waived or paid, and wife did not file an affidavit, court properly dismissed action for failure to comply with order of the court. *Id.*

2. Contempt

Municipal court had summary jurisdiction over attorneys who had represented plaintiff in unsuccessful divorce action in which court ordered payment of attorney fees to counsel appointed for defendant, and such summary power could be invoked to punish such attorneys for contempt when they failed to pay over to defendant's counsel a sum which the court had found had been entrusted to them for payment of such fees. *In re E. L. Ferrell and N. A. Perry* (D.C. Mun. App. 1961, 172 A. 2d 555).

Failure of attorneys to comply with order requiring them to pay over funds found to have been entrusted to them by their client for payment of attorney fees awarded opponent constituted "contempt of court". *Id.*

Trial court had authority to award counsel fees for attorney appointed by court to represent husband in wife's uncontested divorce action dismissed for lack of jurisdiction and lack of proof. *Id.*

In divorce action, where an attorney was appointed for defaulting defendant and final decree granting divorce ordered defendant to pay a fee to attorney but this section providing compensation for attorney so appointed, made no provision for enforcement of payment of compensation, attorney could not enforce payment of his fee by way of contempt proceeding. *Robinson* v. *Robinson* (1948, 80 F. Supp. 397).

§ 16–919. Proof required on default or admission of defendant.

A decree for a divorce, or a decree annulling a marriage, may not be rendered on default, without proof; and an admission contained in the answer of the defendant may not be taken as proof of the facts charged as the ground of the application, but shall be proved by other evidence in all cases. (Dec. 23 1963, 77 Stat. 562, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–419 (Mar. 3, 1901, ch. 854, § 964, 31 Stat. 1345).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissions 1
Confessions 2
Corroboration 3
Nature of proof required 4
Penalty for failure to give deposition 5
Purpose 6
Striking of pleading in divorce action 7
Summary judgment 8
Witness 9

1. Admissions

Admissions of adultery by wife, having been freely made, were rightly received in evidence against her. *Holden* v. *Matteson* (38 App. D.C. 128).

The testimony of a party to a divorce suit need not be corroborated when it is undisputed, the suit is contested and no collusion appears, though testimony is necessary and admissions in pleadings are not enough. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

In husband's action for annulment of marriage to wife who was in armed forces at time of marriage and who refused to join husband after she obtained discharge from service, admissions of wife made in letters and telephone calls to husband that she did not intend to join husband were properly received in evidence. *Farrington* v. *Farrington* (D.C. Mun. App. 1958, 140 A. 2d 921).

2. Confessions

"In *Michalowicz* v. *Michalowicz* (25 App. D.C. 484) it was ruled that this provision [this section] of the code is declarative of the general rule of practice in such cases and was not intended to prohibit all evidence of confessions that may have been made by a party. 'But,' said the court, 'to warrant a decree of divorce the confessions must be well established, direct, and certain, free from suspicion of collusion, and corroborated by independent facts and circumstances.'" *Cogswell* v. *Cogswell* (1919, 258 F. 287, 49 App. D.C. 31).

3. Corroboration

Rule requiring corroboration of plaintiff's testimony in divorce cases was a rule of ecclesiastical courts and disappeared in common-law courts; and, in absence of statutory requirement for corroboration, divorce can be granted on uncorroborated testimony of complainant in uncontested divorce action. *Schroeder* v. *Schroeder* (D.C. Mun. App. 1957, 133 A. 2d 470).

4. Nature of proof required

In divorce proceedings, evidence of wife's adultery must be clear and convincing. Mere circumstances of suspicion are not sufficient. *Krous* v. *Krous* (41 App. D.C. 200). See, also, *Symons* v. *Symons* (1922, 275 F. 1015, 51 App. D.C. 69); *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323); *McKitrick* v. *McKitrick* (1920, 261 F. 451, 49 App. D.C. 109); *Topham* v. *Topham* (1921, 269 F. 1013, 50 App. D.C. 229).

Proof of an adulterous disposition and opportunity to commit offense warrant a finding of adultery. *Allen* v. *Allen* (1923, 285 F. 962, 52 App. D.C. 228).

Where testimony is in conflict, "the finding of the lower court will not be disturbed, unless it is palpably wrong." *Cole* v. *Cole* (1923, 286 F. 764, 52 App. D.C. 302). See, also, *Church* v. *Church* (1921, 270 F. 359, 50 App. D.C. 237).

"But that rule does not require proof beyond the possibility of doubt, nor does it necessarily require proof by eye witnesses of the actual offense. Nor do we overlook the rule that the testimony of hired detectives in such cases should be scrutinized with great caution." *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323). See, also, *Allen* v. *Allen* (1923, 285 F. 962, 52 App. D.C. 228).

5. Penalty for failure to give deposition

Where husband had failed to appear for the taking of his deposition concerning alimony pendente lite in divorce

action, trial judge properly refused to allow husband to testify at preliminary hearing concerning temporary support. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

6. Purpose

It is the purpose of law of District of Columbia to require caution in granting of uncontested divorces and to prevent the granting of default decrees, without proof. *Stone* v. *Stone* (1943, 136 F. 2d 761, 78 U.S. App. D.C. 5).

7. Striking of pleading in divorce action

Rule that pleadings may be stricken if person willfully fails to appear before officer for deposition purposes is permissive and does not require that it be done and was not applicable in divorce case since only purpose for striking an answer would be to proceed as if in default, but this section specifically forbids the grant of divorce on default. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

8. Summary judgment

Divorce should not be granted by judgment on the pleadings or by summary judgment. *Rea* v. *Rea* (1954, 124 F. Supp. 922).

Public is third party in every divorce case and has interest in preservation of the marriage bond, and therefore, divorce should not be granted until after the court hears evidence. *Id.*

Even if issue, on which moving party relied as basis for its application for summary judgment in divorce proceeding on ground that such issue was res judicata due to prior litigation between the parties, had been established by court's finding in prior action, summary judgment for divorce would not be granted, but taking of evidence would be required. *Id.*

9. Witness

"In the case of *Bergheimer* v. *Bergheimer* (17 App. D.C. 381), we held that in divorce cases the parties to a suit are not competent to testify as witnesses in their own behalf. Therein we followed the ruling of the general term of the Supreme Court of the District in the case of *Burdette* v. *Burdette* (2 Mackey (13 D.C.) 469) and the uniform rule of practice in this District. And this rule, we think, is not affected by section 1068 of the Code (§ 14–306). * * * This section must be taken as qualified by section 964 of the Code (this section), which provides a special rule of evidence for divorce cases." *Lenoir* v. *Lenoir* (24 App. D.C. 160).

This section has no relation to the competency of the witnesses of the parties to the suit. *Early* v. *Early* (1920, 261 F. 1003, 49 App. D.C. 123).

The parties to a divorce suit are competent witnesses. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

§ 16–920. Effective date of final decree—Contents.

A final decree annulling or dissolving a marriage is not effective to annul or dissolve the marriage until the expiration of the time allowed for taking an appeal, and until the final disposition of any appeal taken, and every final decree shall expressly so recite. Every decree for absolute divorce shall contain the date thereof and may not be absolute and take effect until the expiration of six months after its date. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–421 (Apr. 19, 1920, ch. 153, § 983a, 41 Stat. 567; Aug. 7, 1935, ch. 453, § 4, 49 Stat. 540).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Assault during coverture 2
Death 3
Defense in collateral proceeding 4
Defense to polygamy 5
Effect of foreign decree 6
In general 1

1. In general

Meaning and purpose of this provision is to prevent the remarriage of and preserve the status quo of the parties until the losing party may have his or her full legal rights and the law should be satisfied when that result is accomplished. *Tillinghast* v. *Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

2. Assault during coverture

Action against former husband for assault committed after decree of absolute divorce had been entered, but before expiration of six months' period when decree would become effective, could be maintained as against contention that a married woman may not sue for assault committed on her by her husband during coverture. *Steele* v. *Steele* (1946, 65 F. Supp. 329).

3. Death

Widow was entitled to share in the estate of her husband, as widow, where husband died within six months after entry of a decree of divorce from widow but before that decree has become final. *B. H. Saunders, Executor etc. et al.* v. *A. B. B. Hanson* (1964, 327 F. 2d 889, 117 U.S. App. D.C. 191).

Death of one of the parties during six-month period following entry of an absolute divorce decree abates the action for all purposes. *Id.*

Where husband and wife held realty as tenants by the entirety, and wife obtained a decree of absolute divorce that did not expressly deal with realty, and wife died five months and four days after decree was signed so that decree did not become final, divorce proceedings were properly declared abated, and daughter of the deceased wife was not entitled to an interest in the realty by descent on ground that the wife was a tenant in common thereof at time of her death. *Wesley* v. *Brown* (1952, 196 F. 2d 859, 90 U.S. App. D.C. 351).

4. Defense in collateral proceeding

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such district, was not estopped to plea invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver* v. *Oliver* (1951, 185 F. 2d 429, 87 U.S. App. D.C. 334).

5. Defense to polygamy

Since plaintiff had been legally divorced in the District while the parties were domiciled there, and the decree became effective unconditionally and irrevocably, she was thereafter an unmarried woman and could not be guilty of polygamy. *Loughran* v. *Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219, rehearing denied 54 S. Ct. 861, 292 U.S. 615, 78 L. Ed. 1474).

6. Effect of foreign decree

A Virginia decree of absolute divorce issued May 14, 1958 and not appealed finally dissolved the plaintiff's marriage to a federal employee upon its issuance and hence she was no longer the wife of the employee on July 8, 1958, the date of his death, and was not entitled as his widow to receive the proceeds of federal group life insurance on his death and the parents of the employee were entitled to such proceeds. *Dillard* v. *Dillard* (1960, 275 F. 2d 878, 107 U.S. App. D.C. 214).

§ 16–921. Validity of marriage, action to determine.

When the validity of an alleged marriage is denied by either of the parties thereto the other party may institute an action for affirming the marriage, and upon due proof of the validity thereof the court shall decree it to be valid. The decree shall be conclusive upon all parties concerned. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–422 (Mar. 3, 1901, ch. 854, § 981, 31 Stat. 1346).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Finding by court in advisory action 1
Jurisdiction 1.50
Maintenance of action 2
Remarriage before appeal date 3
Validity of foreign divorce 4

1. Finding by court in advisory action

Where trial court properly disclaimed jurisdiction of action by alleged wife against alleged husband for declaration as to marital status, as only an advisory opinion was sought, it was error for trial court to find as fact that marriage was invalid. *Gardner* v. *Gardner* (1956, 233 F. 2d 23, 98 U.S. App. D.C. 144).

1.50. Jurisdiction

Where woman sued by alleged common-law wife for order declaring validity of common-law marriage filed counterclaim seeking declaration that, as lawful wife, she was entitled to interest in property owned by male defendant, defendant woman was not entitled to thereafter contend that court was limited to determination of marital status of plaintiff. *I. M. Lee* v. *G. M. Lee and G. V Lee* (D.C. App. 1964, 201 A 2d 873).

2. Maintenance of action

Under this section providing that where validity of alleged marriage is denied by either party, other party may institute suit for affirming marriage, action by alleged wife against alleged husband for declaration as to marital status could not be maintained where she alleged neither validity nor invalidity of marriage and husband answered that he could neither admit nor deny her allegations concerning doubt as to marital status, in view of fact that marriage was not asserted by one party and denied by other. *Gardner* v. *Gardner* (1956, 233 F. 2d 23, 98 U.S. App. D.C. 144).

3. Remarriage before appeal date

A wife's remarriage before time had expired for taking appeal from husband's annulment decree, was valid. *Tillinghast* v. *Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

4. Validity of foreign divorce

Alabama divorce decree was subject to challenge in the District of Columbia for lack of jurisdiction over the res, or over either of the parties, where husband merely flew into Alabama, signed a complaint and affidavit, and 4 or 5 hours later flew back to his home and business in Washington, D.C., even though wife signed an acceptance of service of process and answer and waiver. *E. G. DeParata* v. *B. G. DeParata* (D.C. Mun. App. 1962, 179 A. 2d 723).

§ 16–922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.

This chapter does not invalidate any marriage solemnized according to law before January 1, 1902, or any decree or judgment of divorce pronounced before that date. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–420 (Mar. 3, 1901, ch. 854, § 967, 31 Stat. 1345).

Changes are made in phraseology.

Chapter 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

SUBCHAPTER I.—EJECTMENT

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16–1152. Order to produce life tenant—Service of order.
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SUBCHAPTER I.—EJECTMENT

§ 16–1101. Parties defendant—Joint tenants and tenants in common.

(a) A civil action based upon a cause of action in ejectment, may be brought against:

(1) the person actually occupying the premises claimed, either in person or by tenant; or

(2) both the claimant and his tenant, or other occupant claiming under him; or

(3) if the premises are not actually occupied, a person exercising acts of ownership thereon adversely to the plaintiff.

When a lessee is made a defendant at the suit of a party claiming against the title of the lessee's landlord, the landlord may appear and be made a party defendant in the place of his lessee.

Any person claiming to be in possession may, on motion, be admitted to defend the action.

(b) Joint tenants shall sue jointly in ejectment, but tenants in common may sue either jointly or separately, and any number of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–501, 16–510 (Mar. 3, 1901, ch. 854, §§ 984, 994, 31 Stat. 1347, 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

Section consolidates sections 16–501 and 16–510 of D.C. Code, 1961 ed.

At the beginning, words "A civil action, based upon a cause of action in ejectment," are substituted for "Every action of ejectment" to conform the terminology more closely with rule 2 of the Federal Rules of Civil Procedure, which provides, with respect to civil cases, that there shall be only one form of action, to be known as a "civil action". See, also, rule 2 of the civil rules of the Court of General Sessions.

The provision of section 16–501 of D.C. Code, 1961 ed., that the action "shall be brought in the name of the real claimant" is omitted as covered by the first clause of rule 17(a) of the Federal Rules of Civil Procedure, which provides that "Every action shall be prosecuted in the name of the real party in interest". See, also, the first clause of rule 17(a) of the civil rules of the Court of General Sessions.

For procedural provisions relating to necessary, permissive, misjoinder, or nonjoinder of parties, and interpleader, see rules 19–22, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Equity 1
Estoppel 2
Historical 3
Pleading 4
Possession 5
Presumption as to judgment 6
Proof of title 7
Right of action 8
Right of tenant in common 9

1. Equity

When equity has jurisdiction to enjoin prosecution of an action of ejectment involving three tracts of land, so far as two tracts are concerned, on ground that defendants have no adequate remedy at law, it will assume jurisdiction as to the third tract to terminate the litigation even though the defendants would have a remedy as to said third tract. *Camp* v. *Boyd* (35 App. D.C. 159, affirmed 33 S. Ct. 785, 229 U.S. 530, 57 L. Ed. 1317).

2. Estoppel

Strict rules of estoppel are present when the parties in both actions are the same, when they are parties in interest, not only asserting in both instances the right of possession, but the title to the property. *Lyon* v. *Bursey* (36 App. D.C. 235).

3. Historical

The abolition of fictions in pleading in the District of Columbia by act June 1, 1870 (16 Stat. 146, ch. 115) and providing that all actions for the recovery of real estate in the District should be commenced in the name of the real party in interest, did not abolish the action of ejectment or make any other alteration in the form of the action, or extend limitations. *Hogan* v. *Kurtz* (1876, 94 U.S. 773, 4 Otto 773, 24 L. Ed. 317).

British statutes prohibiting conveyance of lands held adversely are obsolete in this District. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D.C. 587, affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

4. Pleading

It seems to be unnecessary to plead the statute of limitations where the general issue has been pleaded in actions of ejectment. *McMillan* v. *Fuller* (41 App. D.C. 384).

Where defendant pleads the general issue, and was found in possession of the land demanded, his plea must be construed as making defense for the whole. *Marine R. & Coal Co.* v. *United States* (1920, 265 F. 437, 49 App. D.C. 285, affirmed 42 S. Ct. 32, 257 U.S. 47, 66 L. Ed. 124).

5. Possession

"Where in ejectment a party in possession has been ejected from the premises under a judgment found upon appeal or writ of error to be erroneous, the party so dispossessed is entitled to restitution of the premises." *Wilson* v. *Newburgh* (42 App. D.C. 407).

The court is without jurisdiction to permit the plaintiff to retain possession under such reversed judgment, conditioned upon paying the original occupant a monthly rental pending further litigation. *Id.*

6. Presumption as to judgment

The doctrine as to the inconclusiveness of judgments of ejectment has been abrogated by section 1002 of the Code (§ 16–518). *Lyon* v. *Bursey* (36 App. D.C. 235).

7. Proof of title

For exceptions to the rule that plaintiff in ejectment must recover on strength of his own title, see *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D.C. 587, affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

Marshal's deed of land which shows levy upon and sale of property under judgment is not sufficient to show title to the land in the grantee, but the grantee must prove the judgment and the execution. *Rowlett* v. *Nash* (38 App. D.C. 598).

One in peaceable possession of property, either in person or by tenant, is presumed to be in lawful possession, and "he was entitled to recover possession from a mere trespasser without further proof of title." *Nash* v. *Rawlett* (41 App. D.C. 456). See, also, *Bradshaw* v. *Ashley* (1901, 21 S. Ct. 297, 180 U.S. 59, 45 L. Ed. 423); *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D.C. 587, affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175); *Robinson* v. *Hillman* (36 App. D.C. 576).

8. Right of action

Where party occupying landowner's premises had not right to possession but his original entry had been lawful, and where action under forcible entry and detainer statute was not available because relation of landlord and tenant had not existed, ejectment was only appropriate remedy. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Action of ejectment may be commenced by a claimant to property against anyone occupying the premises, either in person or by tenants, or against any person exercising acts of ownership adversely to the plaintiff. *Spruill* v. *Brooks* (D.C. Mun. App. 1908, 68 A. 2d 204).

9. Right of tenant in common

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *Bagby* v. *Honesty* (D.C. Mun. App. 1959, 149 A. 2d 786).

§ 16–1102. Failure of tenant to give notice to landlord.

If a tenant, on whom a complaint in ejectment is served, fails to give notice thereof, without delay, to his landlord or the agent of the landlord, he shall forfeit and pay to the landlord the value of three years' full rent of the premises, to be recovered by a civil action. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–502 (11 Geo. 2, ch. 19, § 12, 1738; Kilty Rep., p. 251; Alex. Br. Stat., p. 737; Comp. Stat. D.C., p. 332, § 61).

Section 16–502 of D.C. Code, 1961 ed., which, as indicated above, was based upon one of the British statutes in force in the District, provided, as follows:

"Every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt.".

As set out in this revised section, the provisions are re-written to modernize the language, but without change of substance. Further, "complaint" is substituted for "declaration", and "civil action" is substituted for "action of debt" to conform the terms with rules 2 and 7(a), respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Municipal Court.

§ 16–1103. Contents of complaint—Adverse possession.

In his complaint in ejectment, the plaintiff shall:

(1) describe the premises claimed with reasonable certainty; and

(2) set forth distinctly the nature and quantity of the estate claimed by him in the premises.

It is sufficient for the plaintiff to state, in addition, that:

(1) he was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession thereof, and withholds the possession of the premises from the plaintiff, or wrongfully detains possession; or

(2) the defendant is wrongfully exercising acts of ownership over the premises.

However, except as provided by this chapter, acts of ownership do not amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–503 (Mar. 3, 1901, ch. 854, § 985, 31 Stat. 1347).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

Cross Reference

Pleadings generally, see § 13–101.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Conforming pleadings to proof

Where only issue as to right of possession raised and tried in landowner's action against occupant was whether parties had intended lease of adjacent lot to cover also the premises in issue, and it appeared that occupant was not entitled to possession, although his entry had been lawful, landowner was not concluded by his allegation describing occupant as a "tenant by sufferance", in view of fact that complaint also alleged that occupant held "without right"; and if there was any doubt in trial judge's mind as to sufficiency of complaint as one in ejectment, it was his duty to permit plaintiff to amend by withdrawing allegations concerning tenancy by sufferance and clearly stating cause of action in ejectment in conformity with facts. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

§ 16–1104. Proof necessary.

(a) Except as provided by subsection (b) of this section, in an action of ejectment it is sufficient to entitle the plaintiff to relief to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed, and that the defendant is:

(1) in possession of the premises, and is holding adversely to the plaintiff; or

(2) exercising acts of ownership over the premises, adversely to the plaintiff.

(b) In an action pursuant to this chapter by one or more joint tenants or tenants in common against their cotenants, the plaintiff shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–505 (Mar. 3, 1901, ch. 854, § 988, 31 Stat. 1347).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Defense 1
Disclaimer of other part 2
Ouster not presumed 3
Proof of title 4
Tenants in common 5

1. Defense

Defense of adverse possession was established. *Holtzman* v. *Douglas* (1897, 18 S. Ct. 65, 168 U.S. 278, 42 L. Ed. 466).

2. Disclaimer of other part

Where plaintiff claims only a portion of the land sued for, he may, under this section, disclaim as to the other part. *Robinson* v. *Hillman* (36 App. D.C. 576).

3. Ouster not presumed

"Ouster will not be presumed, but there must be a showing of positive acts of hostility." *Lyon* v. *Bursey* (42 App. D.C. 519).

4. Proof of title

Where plaintiff and defendant do not claim through common source of title, plaintiff must "show a complete chain of title from the sovereign, either the English crown, the State of Maryland, or the United States," particularly when neither plaintiff nor those under whom he claims was ever in possession of the property. *Bursey* v. *Lyon* (30 App. D.C. 597). See, also, *Anderson* v. *Reid* (10 App. D.C. 426); *Scott* v. *Herrell* (27 App. D.C. 395); *Robinson* v. *Hillman* (36 App. D.C. 576).

5. Tenants in common

"One tenant in common is not liable to his cotenant for use and occupation, unless there has been an actual ouster of the cotenant, or acts amounting to that." *Lyon* v. *Bursey* (42 App. D.C. 519).

§ 16–1105. Legal title in mortgagee or trustee—Possession.

It is not a bar to the plaintiff's recovery in an action of ejectment that the legal title to the property claimed is outstanding in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt, unless the mortgagee or trustee, or those claiming under him, has taken possession of the premises, or unless the defendant claims under the mortgagor or grantor in the deed of trust. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–506 (Mar. 3, 1901, ch. 854, § 989, 31 Stat. 1347; June 30, 1902, ch. 1329, 32 Stat. 537).

Minor changes are made in phraseology.

§ 16–1106. Performance of contract by vendee as precluding vendor from recovery.

Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree for a conveyance of the legal title, without condition, the vendor may not recover the property from the vendee. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–507 (Mar. 3, 1901, ch. 854, § 990, 31 Stat. 1348).

Words "in equity", which followed "decree", are omitted; and words "the vendor may not recover" are substituted for "such vendor shall not be entitled at law, any more than in equity, to recover", in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

A minor change is made in phraseology.

§ 16–1107. Several judgments against defendants occupying distinct parcels.

When it appears on the trial in an action of ejectment that some of the defendants occupy distinct

parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may in the discretion of the court, have several judgments against the respective parties, according to the proof of occupancy. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–508 (Mar. 3, 1901, ch. 854, § 992, 31 Stat. 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

A minor change is made in phraseology.

§ 16–1108. Recovery of less than is claimed.

The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–509 (Mar. 3, 1901, ch. 854, § 993, 31 Stat. 1348).

§ 16–1109. Recovery of mesne profits and damages—Separate count.

(a) The plaintiff may embody in his complaint, in a separate count, a claim for the:

(1) mesne profits received by the defendant from the property sued for; or

(2) clear value of the use and occupation of the property sued for—

extending to the time of the verdict, and also damages for waste or injury to the premises during that period.

(b) If the jury find for the plaintiff, they may, at the same time, find and assess the mense profits, or the value of the use and occupation and the amount of damages, specified by subsection (a) of this section. Except in the case provided for by section 16–1116, there shall be rendered, besides a judgment for the recovery of the property, a judgment against the defendant for the amount so found by the jury. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–511 (Mar. 3, 1901, ch. 854, § 995, 31 Stat. 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

For permissive joinder of claims and remedies, see rule 18 of the Federal Rules of Civil Procedure, and rule 18 of the civil rules of the Court of General Sessions.

§ 16–1110. Recovery, by landlord, of furniture, arrears in rent, and damages—Separate counts.

(a) In an action in ejectment against his tenant, a landlord may embody in his complaint, in separate counts, claims for:

(1) furniture, if leased with the realty;

(2) arrears of rent due at the termination of the tenancy;

(3) double rent in cases authorized by this Code from the termination of the tenancy to the verdict for possession; and

(4) damages for waste or injury to the premises or furniture during the defendant's occupancy of the premises and before commencement of the action.

(b) If the jury find for the landlord, they may, at the same time, find the amounts due for arrears of rent and for double rent and for damages, as provided by subsection (a) of this section, and judgment shall be rendered accordingly. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–512 (Mar. 3, 1901, ch. 854, § 996, 31 Stat. 1348).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

For permissive joinder of claims and remedies, see rule 18 of the Federal Rules of Civil Procedure, and rule 18 of the civil rules of the Court of General Sessions.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Amount of verdict

In action for rent, where defendant admitted liability for a fixed amount and claimed a credit for repairs made, and the evidence was conflicting, some items of defense were hard to prove, and jury had no purely mathematical basis upon which to rest its verdict, a verdict for less than amount demanded, but for more than amount admitted by defendant, would not be disturbed. *Shlopak* v. *Davison* (D.C. Mun. App. 1943, 34 A. 2d 126).

In action for rent where defendant admitted liability for a limited amount, and jury returned a verdict for less than amount demanded, but more than amount admitted to be due by defendant, and verdict was accepted by plaintiff, defendant was in no position to complain that verdict should have been a verdict for all or nothing. *Id.*

§ 16–1111. Separate action for rent or damages.

The plaintiff in ejectment is not required to join his claim for rent or damages with his claim for the recovery of the land and his omission to do so does not prevent him from bringing his action for rent or damages separately. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–513 (Mar. 3, 1901, ch. 854, § 997, 31 Stat. 1348).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Concurrent actions 1
Nature of possessory action 2

1. Concurrent actions

A landlord could maintain action against tenant in District of Columbia District Court for arrears of rent and an action against tenant in the municipal court for possession of leased premises. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 400).

2. Nature of possessory action

A landlord's action for possession of leased premises for nonpayment of rent is statutory substitute for the ancient remedy of ejectment. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400).

§ 16–1112. Expiration of title pending suit—Damages.

If the title of the plaintiff in ejectment expires after the commencement of his action but before the trial, and but for the expiration he would have been entitled to recover, the verdict shall find the facts, and the plaintiff may recover his damages sustained by the wrongful withholding of the possession. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–514 (Mar. 3, 1901, ch. 854, § 998, 31 Stat. 1349).

Changes are made in phraseology.

§ 16–1113. Defense of adverse possession—Enclosure.

In an action to recover vacant and unimproved lots of ground it is not necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been enclosed; but if it appears that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the property and were the only persons who had exercised control over the property for a period of fifteen years before the bringing of the action, the facts shall be the equivalent of possession by actual enclosure. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–515 (Mar. 3, 1901, ch. 854, § 999, 31 Stat. 1349).

Changes are made in phraseology.

CROSS REFERENCE

Quieting title, see § 16–3301.

NOTES TO DECISIONS UNDER PRIOR LAW

Effectiveness of title so secured 2
Limitations 3
In general 1
Occupation by mistake 4
Persons within section 5
Possession by inclosure 6
Presumption that possession followed title 7
Public highway 8
Purpose 9
Recovery against trespasser 10
Tax payments and acts of control 11

1. In general

Defense of adverse possession was established by payment of taxes on lot and collection of rent from one who used it as stoneyard. *Holtzman* v. *Douglas* (1897, 18 S. Ct. 65, 168 U.S. 278, 42 L. Ed. 466).

"The evidence on behalf of the defendant made out a clear case of actual, exclusive, continuous, open, and adverse possession of the premises for more than 20 years by her and those under whom she claimed, and had the effect to create in her a good and sufficient title." *Briel* v. *Jordan* (27 App. D.C. 202).

2. Effectiveness of title so secured

When title is secured by adverse possession an attempted dedication by the record owner is ineffectual to vest title in the District of Columbia. *Rudolph* v. *Peters* (35 App. D.C. 438, Ann. Cas. 1912A, 446).

3. Limitations

This section referred to section 201 of Title 12, and plaintiff could establish title to such lands by adverse possession upon proof of payment of taxes regularly for 15-year period, even though the period did not immediately precede the bringing of the action. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

4. Occupation by mistake

Where one entitled to eight acres of land by mistake takes eleven acres, and occupies the entire tract adversely, such error can not be held to operate against his acquisition by such adverse possession of the three wrongfully occupied acres. *Johnson* v. *Thomas* (23 App. D.C. 141, appeal dismissed 25 S. Ct. 797, 197 U.S. 619, 49 L. Ed. 909).

Occupation by grantee, although by mistake, of land beyond boundaries as specified in deed vests in him an indefeasible title if his possession has been actual, open, notorious, exclusive, and adverse for the statutory period. *Rudolph* v. *Peters* (35 App. D.C. 438, Ann. Cas. 1912A, 446).

5. Persons within section

Congress, in enacting this section, did not intend to limit the substantive effects of the section to specific procedural situation described, and the section was applicable to plaintiff who claimed land by adverse possession and brought action to obtain payment of a condemnation award which had been made in favor of plaintiff and was deposited in registry of court when defendants asserted title to the condemned land. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

6. Possession by inclosure

Congress, in enacting this section which provided that proof of facts specified should be the equivalent of "possession by actual inclosure", intended to make proof of such facts sufficient for creation of title by adverse possession. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Under Maryland law, the phrase "possession by inclosure" embraced all possessory elements necessary for adverse possession, and the court would assume that such meaning was carried over to this section, which provided that proof of certain facts should be the equivalent of "possession by inclosure", in view of fact that the provision was drawn with a view to Maryland law. *Id.*

7. Presumption that possession followed title

Where railroad tracks were on the land, and when plaintiff exhibits a series of deeds purporting to convey the property, the last one to itself, it is to be presumed that possession followed the title until dispossession by the defendant took place. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D.C. 587 affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

8. Public highway

Quaere: Whether one may acquire title by adverse possession of a portion of a public highway outside of the boundary of the city of Washington. *Rudolph* v. *Peters* (35 App. D.C. 438, Ann. Cas. 1912A, 446).

9. Purpose

The purpose of this section was to make proof of facts specified therein, not only the equivalent of possession by actual inclosure, but also of intent to claim adversely. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

This section was not intended as revenue-enforcing measure nor as measure which would make acquisition of title by adverse possession more difficult than it had been previously, and the obvious purpose of the provision was to dispense with necessity for showing that acts of dominion other than assessment and payment of taxes had been continuous throughout the limitation period when no other person had exercised control within it. *Id.*

This section was intended to modify and not merely to codify the previously existing common law. *Id.*

10. Recovery against trespasser

One in adverse possession for less than statutory period, and who has never voluntarily relinquished possession, may recover as against a subsequent trespasser. *Bradshaw* v. *Ashley* (14 App. D.C. 485 affirmed 21 S. Ct. 297, 180 U.S. 59, 45 L. Ed. 423). See, also, *Staffan* v. *Zeust* (10 App. D.C. 260).

11. Tax payments and acts of control

Title to vacant and unimproved land is established by "adverse possession" where claimant shows that for 15 years the land was assessed to him or his predecessors in claim, and that he or they regularly paid the taxes, and exercised other acts of dominion over the property, though not necessarily continuously during the entire period, and that no one else including the legal title holder had done so. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Proof that plaintiff and his predecessors held vacant and unimproved land openly, notoriously, exclusively, and adversely for statutory period, and during that period paid taxes on the land established title in plaintiff by "adverse possession" without proof that acts of ownership other than assessment to and payment of taxes by the plaintiff and his predecessors were exercised by them continuously during the period prescribed by this section. *Id.*

§ 16–1114. Verdict—Judgment—Costs—Future actions.

(a) In an action of ejectment, if the plaintiff's title is established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole

or part of the property or interest claimed in the complaint, as the case may be. If the plaintiff fails to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be. The verdict may be for the plaintiff as to part and for the defendant as to other part thereof. Except as provided by this chapter, judgment shall be rendered according to the verdict.

(b) When it appears on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, the verdict of the jury shall be that the defendant is not guilty. Thereupon, judgment shall be rendered in favor of the defendant against the plaintiff for the costs of the action, but the judgment is not a bar to a future action by the plaintiff against the defendant for the recovery of the property. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–516, 16–517 (Mar. 3, 1901, ch. 854, §§ 1000, 1001, 31 Stat. 1349; June 30, 1902, ch. 1329, 32 Stat. 538).

Section consolidates sections 16–516 and 16–517 of D.C. Code, 1961 ed.

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Judgment for part of property

Under this section, plaintiff may recover a less portion than the whole sued for. *Robinson* v. *Hillman* (36 App. D.C. 576).

§ 16–1115. Conclusiveness of final judgment.

A final judgment rendered in an action of ejectment is conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–518 (Mar. 3, 1901, ch. 854, § 1002, 31 Stat. 1349).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Common law abrogated 1
Final judgment 2
Jurisdiction of municipal court 3

1. Common law abrogated

The section, making any final judgment rendered in action of ejectment conclusive as to title thereby established as between parties to action and all parties claiming under them since commencement of action, was enacted to abrogate doctrine of common law as to inconclusiveness of judgment of ejectment and was not intended to change remedy of injectment from one well defined as possessory in character to one in which title is automatically in issue. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

"The doctrine of the common law as to the inconclusiveness of judgments of ejectment has been abrogated in this District" by code section 984 (§ 16–501) and this section. *Lyon* v. *Bursey* (36 App. D.C. 235).

2. Final judgment

A judgment in ejectment, appealed from, is a final judgment. *Reed* v. *Allen* (1932, 52 S. Ct. 532, 286 U.S. 191, 76 L. Ed. 1054, 81 A.L.R. 703).

3. Jurisdiction of municipal court

Plaintiff's title is not "in issue", in ejectment cases, when it is expressly conceded or not denied, and in such cases municipal court has jurisdiction; but, whenever it becomes apparent in action of ejectment in municipal court that plaintiff's title must be tried and determined, that court should take no further cognizance of cause, but should stop short. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

§ 16–1116. Improvements—Notice—Good faith—Directions to jury—Measure of damages.

In an action of ejectment, at any time before the trial, the defendant may give notice that if the verdict of the jury is in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on the property, which were begun in good faith before the commencement of the action. The court shall then direct the jury, in case they find in favor of the plaintiff's title and also find that the permanent improvements were made by the defendant, or those under whom he claims, under the circumstances described in this section, to assess the:

(1) damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of the improvements, during the whole period of the occupation of the property to the date of the verdict, and any damage done to the property, by waste or otherwise, by the parties during the occupation;

(2) present value of any permanent improvements that may have been placed on the premises by the defendant or those under whom he claims;

(3) present value of the property of the plaintiff without and exclusive of the improvements.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–519 (Mar. 3, 1901, ch. 854, § 1003, 31 Stat. 1349; June 30, 1902, ch. 1329, 32 Stat. 538).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Occupation in good faith

This section "is limited to those who enter into possession of the premises under a title which they had reason to believe, and did believe, to be good, and erect valuable and permanent improvements in good faith." *Robinson* v. *Hillman* (36 App. D.C. 576). See, also, *Armstrong* v. *Ashley* (22 App. D.C. 368), holding that grantee of an occupant in good faith can have no better right than his grantor had to an equitable lien for improvements, citing *Anderson* v. *Reid* (14 App. D.C. 54) and stating that the rule therein announced "has now, at least to some extent, been modified by the code in section 1003 (this section)."

§ 16–1117. New trial as to assessment.

Either party who feels aggrieved by the assessment provided for by section 16–1116, may, within four days after the verdict, move to set the assess-

ment aside, and the court may, for good cause shown, set the verdict aside and order another jury to be empaneled in the cause to make a new assessment. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–567, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–520 (Mar. 3, 1901, ch. 854, § 1004, 31 Stat. 1350; June 30, 1902, ch. 1329, 32 Stat. 538).
Minor changes are made in phraseology.

§ 16–1118. Judgment for damages in excess of improvements.

When the damages of the plaintiff, assessed as provided by section 16–1116, exceed the value of the permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed by section 16–1109. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–521 (Mar. 3, 1901, ch. 854, § 1005, 31 Stat. 1350).
Minor changes are made in phraseology.

§ 16–1119. Judgment when improvements and damages are equal.

When the value of the improvements, ascertained as provided by this chapter, equal but do not exceed the plaintiff's damages, as found by the jury, the plaintiff shall be entitled to judgment only for the recovery of the property sued for and costs. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–522 (Mar. 3, 1901, ch. 854, § 1006, 31 Stat. 1350).
Minor changes are made in phraseology.

§ 16–1120. Election of plaintiff if value of improvements exceeds damages.

If the value of the improvements referred to in this chapter is found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of the excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for the property, with all the plaintiff's right, title, and interest therein. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–523 (Mar. 3, 1901, ch. 854, § 1007, 31 Stat. 1350).
Minor changes are made in phraseology.

§ 16–1121. Judgment and writ of possession after payment for improvements.

When the plaintiff pays to the defendant, within the time fixed therefor by the court, or, in case of the defendant's refusal to accept the payment, pays into court for the defendant's use the amount of the excess of the value of the improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, §1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–524 (Mar. 3, 1901, ch. 854, § 1008, 31 Stat. 1350).
Changes are made in phraseology.

§ 16–1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay.

If the plaintiff tenders to the defendant a deed as provided by section 16–1120 and demands the value of his property without the improvements, as found by the jury, and the defendant fails or refuses to pay the value within the time fixed therefor by the court, the plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and if the plaintiff is a minor, the court may authorize the deed to be executed by his guardian. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–525 (Mar. 3, 1901, ch. 854, § 1009, 31 Stat. 1350).
Changes are made in phraseology.

§ 16–1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.

If the plaintiff fails or refuses either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or, as provided by the chapter, to tender a deed to the defendant and accept from him the value of the plaintiff's property, exclusive of the improvements, the defendant may pay the value into court for the use of the plaintiff. Thereupon, the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover the property for cause theretofore existing. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–526 (Mar. 3, 1901, ch. 854, § 1010, 31 Stat. 1350).
Changes are made in phraseology.

§ 16–1124. Ejectment for non-payment of rent—Time limitation on relief from judgment—Set-off—Dismissal upon payment.

(a) In a case between landlord and tenant, where one-half year's rent or more is in arrear and unpaid, and the landlord or lessor to whom the rent is due has the right by law, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of the rent due, to re-enter for non-payment of the rent, he may, without any formal demand or re-entry, commence a civil action in ejectment for the recovery of the demised premises.

(b) When a judgment is given for the plaintiff in an action pursuant to this section, and execution is had on the judgment, before the rent in arrear and costs of suit are paid, the lease of the property shall cease and be determined, unless the judgment is reversed on appeal or certiorari or, within six months after execution on the judgment, the defendant or a person who has succeeded to his interest, or a mortgagee of the lease or of any party thereof who was not in possession when final judgment was rendered, applies to the court for an order granting equitable relief from the judgment, which is subsequently granted.

(c) When possession of the property recovered has been delivered to the plaintiff under execution issued upon a judgment in an action pursuant to this section, and, in connection with the application for equitable relief from the judgment, the defendant

or other person referred to in subsection (b) of this section, has, prior to or at the time of his application, paid or tendered to the plaintiff or his legal representative or successor in interest, or paid into court for the use of the person entitled thereto, the amount of rent in arrear, as stated in the judgment and costs of suit and all damages sustained by the plaintiff, the order for restoration of possession of the property to the person who made the payment shall provide for setting off the sum that the plaintiff has made, or that he might, without fraud, deceit, or willful neglect, have made, of the property, during his possession, against the rent accruing after the judgment was rendered, and for reimbursement to the applicant of the balance, if any, of the sum paid into court by him, after making the set-off prescribed by this subsection.

(d) At any time before the trial of an action pursuant to this section, the defendant may pay or tender to the plaintiff, or pay into court, the amount of all the rent then in arrear, and costs of suit. Thereupon, the action shall be dismissed. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–532, 16–533, 16–534 (4 Geo. 2, ch. 28, §§ 2, 3, 4, 1731; Kilty's Rept., p. 249; Alex. Br. Stat., pp. 705–707; Comp. Stat. D.C., pp. 326–328, §§ 46, 47, 48).

Section consolidates sections 16–532, 16–533, and 16–534 of D.C. Code, 1961 ed.

The three sections of D.C. Code, 1961 ed., cited above, were derived, as above indicated, from three sections of a British statute of the year 1731, and the text thereof is set out immediately below exactly as it appeared in D.C. Code, 1961 ed.

Sec. 16–532 (4 Geo. 2, ch. 28, § 2)

"In case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs and without filing any bill or bills for relief in equity, within six calendar months after such execution executed; then, and in such case, the said lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, then in every such case such defendant or defendants shall have and recover his, her, and their full costs: provided always, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons entitled to the remainder or reversion, as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.".

Sec. 16–533 (4 Geo. 2, ch. 28, § 3)

"In case the said lessee or lessees, his, her, or their assignee or assignees, or other person or persons, claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of equity. such person or persons shall not have or continue any injunction, against the proceedings at law on such ejectment, unless he, she, or they do or shall within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money, as the lessor, or lessors of the plaintiff in the said ejectment shall, in his, her, or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her, or their entering into the actual possession thereof, and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved in the said lease, then the said lessee, or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.".

Sec. 16–534 (4 Geo. 2, ch. 28, § 4)

"If the tenant or tenants, his, her, or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then, and in such case, all further proceedings on the said ejectment shall cease, and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they, shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them.".

A study of these provisions reveals that not all of section 2 of the British statute was carried into section 16–532 of D.C. Code, 1961 ed., and, if the provisions are to be preserved, apparently they are meaningless unless enough of the missing part is restored to the text to indicate the basis of the action by the landlord or lessor. This missing part of section 2 of the British statute, which was the beginning thereof, and which was also contained in the above-cited section 46 of Comp. Stat. D.C., p. 326, provided:

"And whereas great inconveniences do frequently happen to lessors and landlords, in cases of re-entry for nonpayment of rent, by reason of the many niceties that attend re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at the expense, charge, and delay of recovering in ejectment, before he can obtain the actual possession of the demised premises; and it often happens that after such a re-entry made, the lessee or his assignee, upon one or more bills filed in the court of equity, not only holds out the lessor or landlord, by an injunction, from recovering the possession, but likewise, pending the said suit, do run much more in arrear, without giving any security for the rents due, when the said re-entry was made, or which shall and do afterwards incur: For remedy whereof:

"Be it enacted, That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments, comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof, which service, or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry; and in case of

judgment against the casual ejector, or nonsuit for not confessing lease, entry, and ouster, it shall be made to appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter; then, and in every such case, the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and [here commence the provisions set in section 16–532 of D.C. Code, 1961 ed.]".

The above-quoted provisions, including those contained in the missing part of section 2 of the British statute, are, in modified and modernized form, statutory law in other jurisdictions. See New York Civil Practice Act, § 997 et seq., and Ill. Rev. Stat. 1955, ch. 80, § 4.

In this revised section, the provisions, including those contained in the missing part of section 2 of the British statute, are consolidated. The language is modernized, and surplusage is omitted. Also omitted, are all provisions which are obsolete, or which can have no present application because of the merger, by the Federal Rules of Civil Procedure and the procedural Rules of the Court of General Sessions, of procedure in law and equity, and because there are no separate courts of equity in the District. Both the District Court and the Court of General Sessions have equitable as well as legal jurisdiction, and presumably whatever equitable relief is granted the defendant lessee or other persons mentioned under subsecs. (b) and (c) of this revised section, would be by application to the same court that had rendered judgment in favor of the plaintiff. Subsec. (b) provides for such an application (for an order), and all references to restoration of the property to the lessee, or to an injunction to stay the plaintiff's proceedings, by a separate "court of equity", are omitted.

Another provision of section 2 of the British statute, that was within the provisions carried into section 16–532 of D.C. Code, 1961 ed., but that was omitted from the latter section, followed the words (with respect to the defendant) "shall be barred and foreclosed from all relief or remedy in law or equity,", and read "other than by writ of error, for reversal of such judgment, in case the same shall be erroneous,". In subsec. (b) of this revised section, "appeal or certiorari" is substituted for "writ of error" in conformity with present procedure.

The provision in section 16–532 of D.C. Code, 1961 ed., for awarding costs to the defendant if "verdict shall pass" for him, or if plaintiff is nonsuited, is omitted, as this is a matter that is subject to rules of court. See rules 41 and 54(d) of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions.

It is not intended that this section should confer upon the tenant or other person mentioned in subsec. (b), an absolute right, after execution on the plaintiff's judgment in ejectment, to have possession of the property restored to him if, within 6 months after the execution, he makes the payment or tender referred to in subsec. (c) and applies for an order granting relief from the judgment. Nor was this the purpose of the British statute. Prior to its enactment, where the ejectments after judgments in common-law courts were merely because of nonpayment of rent, courts of equity had been restoring tenants to possession on payment of arrears and interest. To such an extent had this practice been carried, that, in the British statute, the power of Equity to relieve, if it so wished in such cases, was restricted to a period of 6 months after the landlord had recovered the premises in ejectment. This is the object of subsecs. (b) and (c) of this section.

SUBCHAPTER II.—PROCEEDINGS TO DISCOVER THE DEATH OF A TENANT FOR LIFE

§ 16–1151. Petition by person entitled to claim—Form and contents.

(a) A person entitled to claim real property, after the death of another person who has a prior estate therein, may, not oftener than once a year, petition the court for an order directing the production of the tenant for life, as prescribed by this subchapter, by a person, named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead, or, if there is no such person, by the guardian, trustee, or other person who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

(b) A petition prescribed by subsection (a) of this section shall be verified by the affidavit of the petitioner, and shall contain an averment that the petitioner has cause to believe that the person, upon whose life the prior estate depends, is dead, and that his or her death is being concealed by the person named in the petition. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–527 (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16–1152 and 16–1153 herein are based upon different parts of section 16–527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707, and which provided, as follows:

"Any person or persons who hath or shall have any claim or demand in or to any remainder, reversion or expectancy or in to any estate, after the death of any person within age, married woman, or any other person whatsoever, upon affidavit made in the court of chancery, by the person so claiming such estate, of his or her title, and that he or she hath cause to believe that such minor, married woman, or other person is dead, and that his or her death is concealed by such guardian, trustee, husband, or any other person, shall and may once a year, if the person aggrieved shall think fit, move the chancellor to order, and they are hereby authorized and required to order such guardian, trustee, husband, or other person, concealing or suspected to conceal such person, at such time and place as the said court shall direct, on personal or other due service of such order, to produce and shew to such person and persons (not exceeding two) as shall in such order be named by the party or parties prosecuting such order, such minor, married woman, or other persons, aforesaid; and if such guardian, trustee, husband, or such other person, as aforesaid, shall refuse or neglect to produce or shew such infant, married woman, or such other person, on whose life any such estate doth depend, according to the directions of the said order, that then the court of chancery is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the said court of chancery, or otherwise, before commissioners to be appointed by the said court, at such time and place as the court shall direct, two of which commissioners shall be nominated by the party or parties prosecuting such order, at his, her or their costs and charges; and in case such guardian, trustee, husband, or other person, shall refuse or neglect to produce such infant, married woman, or other person so concealed, in the court of chancery, or before such commissioners, whereof return shall be made by such commissioners, and that return filed, in either or any of the said cases, the said minor, married woman, or such other person so concealed, shall be taken to be dead, and it shall be lawful for any person claiming any right, title or interest in remainder or reversion, or otherwise after the death of such infant, married woman, or such other person so concealed, as aforesaid, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, so concealed were actually dead."

In this section and sections 16–1152 and 16–1153 herein, and in sections 16–1154 to 16–1158, inclusive, herein, which are from other provisions of the same British statute, the language is modernized and every effort is made to conform the provisions with present practice under rules of

court, and to simplify the meanings and implications of the older provisions, even to the extent of inserting material technically not contained in those sections (but implied therein), but without change of substance. The revised provisions are patterned to some extent upon some of the provisions of New York Real Property Law, § 570 et seq., that apparently were derived from the same original source.

In this section, "petition" is substituted for "affidavit", but subsec. (b) provides that the petition shall be verified by affidavit of the petitioner. It would seem that this would be in conformity with present practice, and yet would meet the requirements of the older law. Rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions, provide, among other things that in ordinary civil actions (see rules 2, respectively, thereof) there shall be a "complaint". However, even under the Federal Rules of Civil Procedure, the term "petition" is used in connection with certain special proceedings. See, for example, rule 27 thereof, regarding the perpetuation of testimony. As the proceeding provided for herein is special in nature, resulting, not in a judgment, but in a court order, it is considered that "petition", rather than "complaint", is the proper term.

Words in this section, "by a person named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead", were not contained in section 11–527 of D.C. Code, 1961 ed., but they place no limitation on the proceeding which does not exist at present, and they are inserted for the purpose of clarification.

Throughout sections 16–1151 to 16–1158 herein, "court" is substituted for "court of chancery", as the latter is an obsolete term. Both the United States District Court for the District of Columbia, and the District of Columbia Court of General Sessions, have both law and equity jurisdiction, and law and equity procedure were merged by the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

§ 16–1152. Order to produce life tenant—Service of order.

Upon the presentation of the petition and affidavit prescribed by section 16–1151, the court shall issue an order to the person named in the petition to produce and show to the persons named in the order by the petitioner not exceeding two in number, at such time and place as the court directs, the person upon whose life the prior estate depends. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88–241, § 1.)

Revision Notes

Based on the D.C. Code, 1961 ed., § 16–527 (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16–1151 and 16–1153 herein are based upon different parts of section 16–527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 11–527, see revision note under section 16–1151 herein, and see that note also for explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein.

Section 16–527 of D.C. Code, 1961 ed., provided merely for "personal or other due services" of the order referred to. For the purpose of clarification, and to conform with applicable rules of court, this revised section provides that a certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. See rules 4 and 5, respectively, of the Federal Rules of Civil Procedure, and the same numbered rules of the civil rules of the Court of General Sessions.

§ 16–1153. Failure to produce as ordered—Subsequent proceedings — Commissioners — Presumption of death—Right of possession.

(a) If a person upon whom an order, as prescribed by section 16–1152, is served, refuses or neglects to produce the person upon whose life the prior estate depends in the manner provided by the order, the court shall order him to produce the person in court or before commissioners appointed by the court, at such time and place as the court directs. Two of the commissioners shall be nominated by the petitioner, and they shall serve at his expense. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. The commissioners appointed shall make and file with the court a return showing the results of their investigation and their conclusions.

(b) If the person upon whom the second order prescribed by subsection (a) of this section is served refuses or neglects to produce, in court, or before the commissioners, as the case may be, the person upon whose life the prior estate depends, it shall be presumed that the latter person is dead, and the court shall issue an order permitting the petitioner to take possession of the property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 569, Pub L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–527 (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16–1151 and 16–1152 herein are based upon different parts of section 16–527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 11–527, see revision note under section 16–1151 herein, and see that note also for explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein.

Section 16–527 of D.C. Code, 1961 ed., provided for service of the order referred to in section 16–1152 herein, but was silent with respect to service of the second order, that is, the order referred to in subsec. (a) of this section. Obviously, however, the second order would have to be served, and subsec. (a) of this section, in providing for such service, provides that a certified copy of it shall be served in the manner provided by rules of court. See revision note under section 16–1152.

Further, while section 16–527 of D.C. Code, 1961 ed., provided that if the life tenant was not produced, as required, it would be "lawful" for the petitioner to enter upon the property claimed, it did not provide for entry after order of court. It would seem that such an order would be a prerequisite to the entry, and, for the purpose of clarification, subsec. (b) of this revised section provides for it.

§ 16–1154. Investigation outside the District—Report to court—Presumption of death—Right to possession.

If before, or at the time of, the presentation of the commissioners' return provided for by section 16–1153, or, where commissioners are not appointed, at any time before a final order is made, the party upon whom the first or second order is served presents to the court presumptive proof, by affidavit, that the person, whose death was in question, is, or lately was, at a place certain, without the District of Columbia, the petitioner, at his own expense, may send one or both of the persons named in the first order to view him. If the person concealing or

suspected of concealing the person upon whose life the prior estate depends, or the fact of his death, refuses or neglects to produce him or to procure him to be produced to the personal view of the persons sent for that purpose, the persons sent to view him shall make a true return of the refusal or neglect to the court, and the return shall be filed in the court. Thereupon, it shall be presumed that the tenant for life is dead, and the court shall issue an order permitting the petitioner to take possession of the real property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–528 (6 Ann, ch. 18, § 2, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 7).

As indicated above, section 16–528 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16–528 provided, as follows:

"If it shall appear to the said court by affidavit, that such minor, married woman, or other persons, mentioned in section 16–527, for whose life such estate is holden, is, or lately was at some certain place beyond the seas in the said affidavit to be mentioned, it shall and may be lawful for the party or parties prosecuting such order, as aforesaid, at his, her, or their costs and charges, to send over one or both the said persons appointed by the said order, to view such minor, married woman, or other person, for whose life any such estate is holden; and in case such guardian, trustee, husband or other person concealing or suspected to conceal such persons, as aforesaid, shall refuse or neglect to produce or procure to be produced to such person or persons, a personal view of such infant, married woman, or other person, for whose life any such estate is holden, that then and in such case such person or persons are hereby required to make a true return of such refusal or neglect to the court of chancery, which return shall be filed, and thereupon such minor, married woman, or other person, for whose life any such estate is holden, shall be taken to be dead; and it shall be lawful for any person claiming any right, title or interest, in remainder, reversion or otherwise, after the death of such infant, married woman, or other person, for whose life any such estate is holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, for whose life any such estate is holden, were actually dead".

For explanation of the policy followed in restating the provisions carried into this section and sections 16–1151 to 16–1153 and 16–1155 to 16–1158 herein, all of which are from provisions of the same British statute, see revision note under section 16–1151 herein.

While the provisions, as set out in this section, are completely rewritten, they do not make any change in substance, although, to clarify the provisions, words "without the District of Columbia" are substituted for "beyond the seas".

§ 16–1155. Restoration of property to life tenant.

The possession of real property that has been awarded to a petitioner pursuant to this subchapter, upon the presumption of the death of the person upon whose life the prior estate depends, shall be restored, by an order of the court, to the person evicted, or to his heirs, or legal representatives, upon the petition of the latter, and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such a petition are the same as those prescribed by this subchapter to be followed upon the petition of the person to whom possession is awarded. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–529 (6 Ann, ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D.C., p. 357, § 8).

This section and section 16–1156 herein are based upon different parts of section 16–529 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707, and which provided, as follows:

"If it shall afterwards appear upon proof, in any action to be brought pursuant to sections 16–527, 16–528, that such infant, married woman, or other person, for whose life any such estate is holden, were alive at the time of such order made, then it shall be lawful for such infant, married woman, guardian or trustee, or other person having any estate or interest, determinable upon such life, to reenter upon the said lands, tenements or hereditaments, and for such infant, married woman, or other person, having any estate or interest determinable upon such life. their executors, administrators or assigns, to maintain an action against those who, since the said order, received the profits of such lands, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same received, from the time that such infant, married woman, or other person, having any estate or interest determinable upon such life, were ousted of the possession of such lands, tenements or hereditaments".

For explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

Section 16–529 of D.C. Code, 1961 ed., as indicated above, in providing for restoration of the property to the life tenant upon proof that the person presumed to be dead was still living, provided merely that it would be "lawful" for the person evicted to re-enter on the property. Presumably, however, an order of court would be a prerequisite to reentry, and the provisions, as herein revised, so provide.

The provisions, as herein set out, are completely rewritten, but they do not make any change in substance.

§ 16–1156. Recovery of profits by person evicted.

A person evicted, as prescribed by this subchapter, may, when the presumption upon which he is evicted is erroneous, maintain a civil action against the person who has occupied the property, or his executor or administrator, to recover the full profits of the property during the occupation, while the person, upon whose life the prior estate depends, is or was living. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–529 (6 Ann, ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D.C., p. 357, § 8).

This section and section 16–1155 herein are based upon different parts of section 16–529 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 16–529, see revision note under section 16–1155 herein, and for explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

The provisions, as set out herein, are completely rewritten, but they do not make any change in substance.

§ 16–1157. Preservation of life tenants' rights if living at time of return.

When a guardian, trustee, or other person holding an estate or interest determinable upon the life of another person, shows by affidavit or otherwise, to the satisfaction of the court, that:

(1) he has used his utmost efforts to procure

the tenant for life to appear in the court or elsewhere, according to the order of the court;

(2) he can not procure or compel him so to appear; and

(3) the tenant for life is or was living at the time of the return made and filed, as prescribed by this subchapter—

he may continue in the possession of the estate, and receive the rents and profits for and during the infancy of the infant, or for and during the life of any other person on whose life the estate or interest depends. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–530 (6 Ann, ch. 18, § 4, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D.C., p. 357, § 9).

As indicated above, section 16–530 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16–530 provided, as follows:

"If any such guardian, trustee, husband or other person or persons, holding or having any estate or interest, determinable upon the life or lives of any other person or persons, shall by affidavit or otherwise, to the satisfaction of the said court of chancery, make appear, that he, she or they have used his, her, or their utmost endeavours to procure such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, to appear in the said court of chancery, or elsewhere, according to the order of the said court in that behalf made; and that he, she or they can not procure or compel such infant, married woman, or other person or persons so to appear, and that such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, is, are or were living at the time of such return made and filed, as aforesaid, then it shall be lawful for such person or persons to continue in the possession of such estate, and receive the rents and profits thereof for and during the infancy of such infant, and the life or lives of such married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend".

For explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

The provisions, as set out herein, are rewritten, but they do not make any change in substance.

§ 16–1158. Persons holding over after life estate—Damages.

A guardian or trustee for an infant, or other person having an estate determinable upon life or lives, who, after the determination of the particular estate or interest, without the express consent of the person or persons who is or are next and immediately entitled thereto, holds over and continues in possession of the real property, is a trespasser. Any person entitled to the real property upon or after the determination of the particular estate or interest, or his executor or administrator, may recover in damages against the person so holding over, or his executor or administrator, the full value of the profits received during the wrongful possession. (Dec. 23, 1963, 77 Stat. 571, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–531 (6 Ann, ch. 18, § 5, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D.C., p. 357, § 10).

As indicated above, section 16–531 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16–531 provided, as follows:

"Every person who, as guardian or trustee for any infant, and every husband seized in right of his wife only, and every other person having any estate determinable upon any life or lives, who after the determination of such particular estates or interests, without the express consent of him, her or them, who are or shall be next, and immediately entitled, upon and after the determination of such particular estates or interests, shall hold over and continue in possession of any manors, messuages, lands, tenements or hereditaments, shall be and are hereby adjudged to be trespassers; and every person and persons, his, her and their executors and administrators, who are or shall be entitled to any such manors, messuages, lands, tenements and hereditaments, upon or after the determination of such particular estates or interests, shall and may recover in damages against every such person or persons so holding over, as aforesaid, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession, as aforesaid".

For explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

The provisions, as set out herein, are rewritten, but they do not make any change in substance.

Chapter 13.—EMINENT DOMAIN

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 16–1301. Jurisdiction of District Court.

The United States District Court for the District of Columbia has jurisdiction of all proceedings for the condemnation of real property authorized by this chapter, with full power to hear and determine all issues of law and fact that may arise in the proceedings. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 16–601, 16–615, 16–616, 16–619 (Mar. 3, 1901, ch. 854, § 483, 31 Stat. 1265; Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415; Mar. 1, 1929, ch. 439, 45 Stat. 1437; Apr. 11, 1935, ch. 57, §§ 4, 5, 59 Stat. 153; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Sections 16–601, 16–615, and 16–616 of D.C. Code, 1961 ed., did not contain jurisdictional language, but section 16–601, which is carried into section 16–1311 herein, provided that the condemnation proceedings referred to therein should be brought in the District Court; section 16–615, which is carried into section 16–1336 herein, provided that the condemnation proceedings referred to therein should be in accordance with section 16–601 et seq.; and section 16–616, which is carried into section 16–1337 herein, provided that the condemnation proceedings referred to therein should be in accordance with section 16–619 et seq.

Only the jursidictional provisions of section 16–619 of D.C. Code, 1961 ed., are carried into this section. The remainder of section 16–619 is carried into section 16–1351 and 16–1352 herein.

Changes are made in phraseology.

§ 16–1302. Assignment of judge for condemnation cases.

The chief judge of the United States District Court for the District of Columbia shall assign from time to time, and for such periods as he determines, one of the judges of the court to hear cases involving the condemnation of real property in the District of Columbia. In case of the disability of the judge so assigned, or for any other reason, the chief judge may assign any judge of the Court for service in condemnation cases. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–301 (Mar. 3, 1863, ch. 91, § 1, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 60, 31 Stat. 1199; Dec. 20, 1928, ch. 41, 45 Stat. 1056; June 19, 1930, ch. 537, 46 Stat. 785; June 25, 1936, ch. 804, 49 Stat. 1921; May 31, 1938, ch. 290, § 5, 52 Stat. 584; June 25, 1948, ch. 646, §§ 24, 32(b), 62 Stat. 990, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The provision that only when the judge assigned to condemnation cases is "not engaged in such cases" shall he be subject to assignment to the other business of the court is omitted. It is the practice to assign one of the civil nonjury judges to hear condemnation proceedings, and the judge so assigned gives priority to condemnation proceedings over other cases. Ordinarily, however, condemnation proceedings are not sufficient to take the entire time of a judge, and to require him to do no other work while assigned to condemnation proceedings is wasteful and inefficient. This is a matter of internal administration and should not be governed by statute.

Changes are made in phraseology.

Cross Reference

Appointment of judges, see U.S. Code, Title 28, § 88.

SUBBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

§ 16–1311. Condemnation proceedings by Board of Commissioners.

When real property in the District of Columbia is needed by the Board of Commissioners of the District for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and it can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the United States District Court for the District of Columbia in the name of the Board for the condemnation of the property or right of way and the ascertainment of its value. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–601 (Mar. 3, 1901, ch. 854, § 483, 31 Stat. 1265; Mar. 1, 1929, ch. 439, 45 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1939, ch. 139, § 127, 63 Stat. 107).

The term "complaint" is substituted for "petition" to conform with the Federal Rules of Civil Procedure. See, particularly, rules 7(a) and 71A(c) thereof.

Changes are made in phraseology.

Cross References

Assessor of the District as expert witness, see § 14–308.

Assignment of special judge in cases involving condemnation of land for the District of Columbia, see § 16–1302.

Condemnation for right-of-way of water line from Dalecarlia Reservoir to Arlington County Sanitary District in Virginia, see § 43–1532.

Condemnation for streets, alleys, or highways, see § 7–201 et seq.

Condemnation of insanitary buildings, see § 5–616 et seq.

Condemnation of land for children's tuberculosis sanatorium, see § 32–312.

Condemnation of land for municipal center, see § 9–201.

Condemnation of land for United States, see § 16–1351 et seq.

Condemnation of lands for parks and playgrounds, see § 1–1011.

Condemnation of lands for sites for refuse incinerators, see § 6–505.

Condemnation of materials to make or repair public roads, see § 7–332.

Condemnation proceeding in cases concerning alleys and minor streets, see § 7–301 et seq.

Condemnation proceedings to close useless streets and alleys under Street Adjustment Act, see § 7–401 et seq.

Condemnation proceedings to establish building lines on streets, see § 5–203.

Condemnation proceedings under Alley Dwelling Act, see § 5–103.

Condemnation to open, widen, or straighten alleys or minor streets, see § 7–313 et seq.

Condemning land in excess of needs, see §§ 16–1331 to 16–1338.

No damages may be paid upon condemnation of telegraph company property for the right to lay conduits, see § 43–1417.

Proceeding by certain railroads to acquire land for railroad facilities, see § 7–1221.

Proceedings to acquire land for viaducts and subways, see § 7–1215.

NOTES TO DECISIONS UNDER PRIOR LAW

Abandonment of proceedings 1
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Discretion of municipal officers 5
Fee simple estate 6
High school athletic field 7
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1. Abandonment of proceedings

The Commissioners have the right to discontinue and abandon a condemnation proceeding; and such abandonment need not be in toto, but may be in parte. *Johnson & Wimsatt* v. *Reichelderfer* (1933, 66 F. 2d 217, 62 App. D.C. 237).

2. Appropriation not made

The fact that Congress has made no appropriation for payment of the land condemned at the time condemnation proceedings are instituted is no defense. *MacFarland* v. *Elverson* (32 App. D.C. 81).

3. Commissioners

Commissioners of the District have no power to acquire land by condemnation, except by express authority of Congress. *Dougherty* v. *Galliher* (1928, 26 F. 2d 538, 58 App. D.C. 166).

Where power to condemn property for public use has been conferred on municipal offices, it rests with such officers to determine whether it shall be exercised and when and to what extent it shall be exercised, and so long as they do not abuse the power delegated to them, courts are powerless to inquire into motives which actuate them or the propriety of the contemplated improvement. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

4. Construction

The words "authorized by Congress" limit only the preceding phrase "or for other municipal purposes," and have no reference to the preceding phrases. *MacFarland* v. *Elverson* (32 App. D.C. 81).

This statute must be strictly construed; if doubt exists as to authority of commissioners to condemn it must be resolved in favor of the landowner. *Id.*

5. Discretion of municipal officers

An appellate court will not interfere with the report of Commissioners to correct the amount of damages, except in cases of gross error, showing prejudice or corruption. Hence, for an error in the judgment of Commissioners in arriving at the amount of damages there can be no correction, especially where the evidence is conflicting. *Seufferle* v. *Macfarland* (28 App. D.C. 94).

When power of condemnation is vested in municipal officers "it rests with such officers to determine whether it shall be exercised, and when and to what extent it shall be exercised." *MacFarland* v. *Elverson* (32 App. D.C. 81).

6. Fee simple estate

Where land is condemned for school purposes, in absence of special circumstances, it would be reasonable to presume that no estate less than obsolete title is sufficient. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

7. High school athletic field

Land to be condemned for high school athletic field is to be used for "educational" purposes within the meaning of the zoning regulations, and such field may be located in a residential district. *Commissioners of District of Columbia* v. *Shannon & Luchs Constr. Co.* (1927, 17 F. 2d 219, 57 App. D.C. 67).

Appropriation for school athletic field authorizes condemnation proceedings by District. *Id.*

8. Historical

On Mar. 1, 1929, Congress changed the method of procedure in condemnation cases in the District of Columbia and different methods were provided for the United States (§§ 16–601 to 16–619). *Willis* v. *United States* (1938, 99 F. 2d 362, 69 App. D.C. 129).

9. Petitions, sufficiency of

Where District of Columbia's petition in condemnation proceeding alleged that land was necessary for purpose of acquiring a site for school purposes, error, if any, in failure to declare that fee simple estate was being condemned could not be raised by collateral attack on order of condemnation, in absence of record affirmatively showing that a lesser estate than a fee simple would have served the public purpose for which the land was sought. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

10. School sites

To condemn land for school sites, district assessor may not testify as expert witness. *Johnson & Wimsatt* v. *Reichelderfer* (1931, 50 F. 2d 336, 60 App. D.C. 186).

11. Widening street

Under the provisions of this section, condemnation proceedings may be instituted for widening any street. *Nealy* v. *Hazen* (1934, 71 F. 2d 692, 63 App. D.C. 239, certiorari denied 55 S. Ct. 119, 293 U.S. 602, 79 L. Ed. 694).

§ 16–1312. Jury—Special list—Qualifications—Procedure for drawing.

(a) For the purposes of this subchapter, the jury commission shall:

(1) prepare a special list of persons who have the qualifications of jurors, as prescribed by section 11–2301, and who, in addition, are owners of real property in the District;

(2) from time to time, as may be necessary, write the names contained in the special list on separate and similar pieces of paper, which shall be so folded or rolled that the names can not be seen, and place them in a special box to be provided for the purpose;

(3) thereupon, seal and lock the special box, and, after thoroughly shaking the box, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping.

The box may not be unsealed or opened except by the jury commission.

(b) From time to time, as ordered by the court, the jury commission shall publicly break the seal of the box provided for by subsection (a) of this section, and proceed to draw therefrom by lot, without previous examination, the names of such number of persons as the court directs, to serve in condemnation proceedings brought pursuant to section 16–1311, and certify the names so drawn to the clerk of the court. At the time of each drawing, there shall be in the box the names of not less than one hundred persons possessing the qualifications prescribed by subsection (a) of this section.

(c) Except as provided by this section, chapter 23 of Title 11, in so far as it may be applicable, governs

the qualifications of jurors in cases under section 16–1311 and the duties and conduct of the jury commissioners under this section.

(d) A person who has so served within one year may not serve as a condemnation juror under this section. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–603 (Mar. 3, 1901, ch. 854, §484a, as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555 (565); Mar. 1, 1929, ch. 439, 45 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b) 62 Stat. 991; May 24, 1939, ch. 139, § 127, 63 Stat. 107).

While the Federal Rules of Civil Procedure now govern procedure in condemnation cases in the United States District Court for the District of Columbia (see, particularly rule 71A thereof), it would seem that if local law (in the case of the District of Columbia, federal law applied in the District) requires a jury trial of issues, that requirement shall be followed. Therefore, this section providing for the qualifications of, and manner of drawing, jurors, in connection with condemnation of real property for the use of the District, is retained. See rules 71A (h), (k) and 81(e) of the Federal Rules of Civil Procedure.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of court 1
Jury, definition of 2
Powers of discretion 3
Preparation of jury lists 4

1. Duty of court

The court has the duty of guiding and directing the jury commission to the end that proper representation is had of all eligible citizens on general juries and also on the special panels in eminent domain proceedings. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (1945, 58 F. Supp. 832).

2. Jury, definition of

The "jury" in eminent domain proceedings in the District of Columbia is an inquest or commission appointed by the court under this section and differs from an ordinary jury in that its members must be freeholders, need not be unanimous, and may number more or less than 12. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (1945, 58 F. Supp. 832).

3. Powers of discretion

This section requiring the jury commission to prepare for eminent domain proceedings a special list of freeholders of the District of Columbia having the qualifications of jurors imports a broad discretion in the commission. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (1945, 58 F. Supp. 832).

4. Preparation of jury lists

The jury commission should prepare with great care not only the general jury lists but also the lists of jurors for eminent proceedings and keep the lists fluid so that some persons will not be frequently re-called while others, including Negroes, are not called. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (1945, 58 F. Supp. 832).

§ 16–1313. Selection of jury—Oath of jurors.

In each action brought pursuant to this subchapter, the court shall appoint, from among the persons whose names are drawn pursuant to section 16–1312, a jury of five capable and disinterested persons, and shall administer to the persons so drawn an oath or affirmation that they:

(1) are not interested in any manner in the real property to be condemned;

(2) are not related to the parties interested in the property; and

(3) without favor or partiality, and to the best of their judgment, will appraise the value of the respective interests of all persons concerned in the property.

(Dec. 23, 1963, 77 Stat. 573, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–604 (Mar. 3, 1901, ch. 854, § 485, 31 Stat. 1265; Apr. 19, 1920, ch. 153, 41 Stat. 555 (565); Mar. 1, 1929, ch. 439, 45 Stat. 1437).

Words "The said court holding a District Court of the United States" are omitted as obsolete. They had reference, originally, to the Supreme Court of the District of Columbia, which court, under prior law, held certain "special terms", one of which was designated the "district court of the United States". The court was redesignated the "District Court of the United States for the District of Columbia" by act June 25, 1936, ch. 804, 49 Stat. 1921. The District of Columbia was made a judicial district upon the enactment, in 1948, of Title 28 of the United States Code, and the correct name of the court is now "United States District Court for the District of Columbia." In this revised section, only the term "the court" is used. This is sufficient, in view of the provisions of sections 16–1311 and 16–1312 herein, in which the full name of the court is used.

The provision "shall thereupon cite all the owners and others persons interested to appear in said court, at a time to be fixed by the court, to answer said petition;", is omitted as covered by rule 71A (c)(2), (d) of the Federal Rules of Civil Procedure; and the provision "and if it shall appear to the court that there are any owners or other persons interested who are under disability, the court shall give public notice of the time at which it will proceed with the matter of condemnation; and at such time, if it shall appear that there are any persons under disability who have appeared or who have not appeared, the court shall appoint a guardian ad litem for each such person," is omitted as covered by rule 71A of the Federal Rules of Civil Procedure. See, particularly subd. (g) thereof. See, also, rule 17(c) of such rules.

The remaining provisions of section 16–604 of D.C. Code, 1961 ed., relating to selection of the jury, and oath of jurors, are retained for the same reason stated in revision note under section 16–1312 herein.

Changes are made in phraseology and arrangement.

§ 16–1314. Declaration of taking—Contents—Deposit—Transfer of title—Determination—Interest.

(a) In an action pursuant to this subchapter, the plaintiffs may file in a cause, with the complaint or at any time before judgment, a declaration of taking, signed by the members of the Board of Commissioners, declaring that the property is thereby taken for use of the District of Columbia. The declaration of taking shall contain or have annexed thereto a—

(1) statement of the authority under which and the public use for which the property is taken;

(2) description of the property taken sufficient for the identification thereof;

(3) statement of the estate or interest in the property taken for public use;

(4) plan showing the property taken; and

(5) statement of the sum of money estimated by the Commissioners to be just compensation for the property taken.

(b) Notwithstanding section 16–1319, upon the filing of the declaration of taking and the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the District of Columbia, and the property shall be deemed to be condemned and taken for

the use of the District, and the right to just compensation therefor shall vest in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–605 (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, ch. 462, 47 Stat. 647).

Section is based on part of section 16–605 of D.C. Code, 1961 ed. Remainder of section 16–605 is carried into sections 16–1315 and 16–1316 herein.

The term "plaintiffs" is substituted for "petitioners", and the term "complaint" is substituted for "petition", to conform with the Federal Rules of Civil Procedure. See rule 71A thereof.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Abandonment 1
Nonuse, effect of 2
Use, immediately after taking 3

1. Abandonment

Where a fee simple estate is acquired in condemnation proceeding, the doctrine of abandonment does not apply. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

2. Nonuse, effect of

Where District of Columbia's petition in condemnation proceeding alleged that land was necessary for purpose of acquiring a site for school purposes, the District obtained a fee simple absolute upon deposit in court of the damages awarded to the owners and title to premises did not revert back to the original owners because of nonuse by the District for school purposes. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

3. Use, immediately after taking

Congress intended to allow public use to proceed immediately upon taking in condemnation proceeding. *B. M. Scholl et al.* v. *District of Columbia* (1964, 331 F. 2d 1018, —— U.S. App. D.C. ——).

§ 16–1315. Distribution of money deposited on declaration of taking—Judgment for deficiency or overpayment—Execution.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16–1314, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure. A writ of execution may be issued on the judgment within the same time, and it shall have the same effect as a lien, and shall be executed and returned in the same manner, as if issued on any other judgment. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–605 (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, ch. 462, 47 Stat. 647).

Section is based on part of section 16–605 of D.C. Code, 1961 ed. Remainder of section 16–605 is carried into sections 16–1314 and 16–1316 herein.

The provision that, after the final award, judgment shall be entered for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure is substituted for the detailed provisions relating thereto in section 16–605 of D.C. Code, 1961 ed. The latter were substantially similar to those in subdivision (j) of rule 71A, and the latter governs on that point.

Changes are made in phraseology.

§ 16–1316. Time for surrender of possession under declaration of taking—Adjustment of charges.

Upon the filing of the declaration of taking provided for by section 16–1314, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiffs. The court may make such orders in respect of incumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–606 (Mar. 3, 1901, ch. 854, § 486, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat.

Section is based on part of section 16–605 of D.C. Code, 1961 ed. Remainder of section 16–605 is carried into sections 16–1314 and 16–1315 herein.

Changes are made in phraseology.

§ 16–1317. Objections to jurors—Appraisement.

The court, before accepting the jury in a condemnation proceeding pursuant to this subchapter, shall hear any objections that may be made to any member thereof, and may pass upon any objection, and may excuse any juror or cause any vacancy in the jury, when empaneled, to be filled. After the jury is organized and have viewed and examined the land and premises affected by the condemnation proceeding, they shall proceed, in the presence of the court, to hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property, where the appraisement shall be recorded. In making their decision, the jury shall take into consideration, when a part only is taken, the benefit to the remainder of the tract, and shall give their appraisement accordingly. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed. § 16–606 (Mar. 3, 1901, ch. 854, § 486, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Instructions 1
Payment as condition precedent 2
Persons in interest 3
Witnesses 4

1. Instructions

In condemnation proceeding, instruction authorizing jury to appraise property at its full market value is not appropriate if anything less than fee is condemned. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

2. Payment as condition precedent

Owner cannot be divested of his property until payment has been made. *MacFarland* v. *Elverson* (32 App. D.C. 81).

3. Persons in interest

In the proceeding before the appraisal commissioners, the District has a right to be heard and therefore is one of the "persons in interest" therein mentioned. *Beyer* v. *Brownlow* (1922, 276 F. 460, 51 App. D.C. 92).

4. Witnesses

It was error to allow a District assessor to testify as an expert witness in proceedings to condemn land for school sites, and certain other municipal purposes. *Johnson & Wimsatt* v. *Reichelderfer* (1931, 50 F. 2d 336, 60 App. D.C. 186).

§ 16–1318. Objections or exceptions to appraisement—New jury.

(a) Objections or exceptions to an appraisement of the jury pursuant to section 16–1317 may be filed within twenty days after the return of the appraisement to the court. The court shall hear and determine any objections or exceptions so filed, and may vacate and set aside the appraisement, in whole or in part, when satisfied that it is unjust or unreasonable. If the appraisement is vacated and set aside, the court shall order the jury commission to draw from the special box the names of as many persons as the court directs, and, from among the persons so drawn, shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed as in the case of the first jury. The appraisement of the new jury shall be final when confirmed by the court.

(b) When an appraisement is vacated in part, the residue thereof as to the property condemned is not affected thereby. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–607 (Mar. 3, 1901, ch. 854, § 487, 31 Stat. 1266; Apr. 19, 1920, ch. 153, 41 Stat. 566; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeal 2
Appraisal by jury 3
In general 1
Interested parties 4
Setting aside verdict 5

1. In general

This section is mandatory and was intended by Congress to require a party in a condemnation proceeding to bring his objections and exceptions to the attention of the court within twenty days, the time limit prescribed, or else be taken to have waived them. *Walker* v. *Hazen* (1937, 90 F. 2d 502, 67 App. D.C. 188, certiorari denied 58 S. Ct. 44, 302 U.S. 723, 82 L. Ed. 559).

This section provides for the summoning of a jury by the marshal and requires the jury to take certain benefits into consideration in returning their verdict. *Beyer* v. *Brownlow* (1922, 276 F. 460, 51 App. D.C. 92).

It was the intent of Congress to make these proceedings adversary throughout and allow either party to invoke the jury hearing provided by this section. *Id.*

2. Appeal

Pending an appeal, the lower court may prevent removal or disturbance of improvements until after a view thereof may be had by the jury impaneled or to be impaneled in a condemnation case. *In re Acquisition of Original Lot 14, and Assessment and Taxation Lot in Washington, D.C.* (1931, 50 F. 2d 981, 60 App. D.C. 216).

3. Appraisal by jury

Jury award of almost $2,000 less than the lowest estimate of the District experts was unjust and unreasonable and sufficient grounds for authorizing reversal for new appraisal. *Branson* v. *Reichelderfer* (1933, 65 F. 2d 280, 62 App. D.C. 129).

It was the province of the jury to weigh the evidence after seeing and hearing all the witnesses and viewing the premises, and trial court did not abuse its discretion in refusing to set aside verdict. *Willis* v. *United States* (1938, 99 F. 2d 362, 69 App. D.C. 129).

4. Interested parties

The words "any of the parties interested" in this section were not to be given such a restricted meaning as to include only owners of the land and to exclude the party equally interested in the proceeding, namely, the District. *Beyer* v. *Brownlow* (1920, 276 F. 460, 51 App. D.C. 92).

5. Setting aside verdict

In condemnation proceeding, the court does not have the power to set aside the verdict of a jury in the absence of plain errors of law, misconduct, or grave error of fact indicating plain partiality or corruption. *Johnson & Wimsatt* v. *Hazen* (1938, 99 F. 2d 384, 69 App. D.C. 151).

§ 16–1319. Payment of award—Transfer of title.

If the appraisement of the jury pursuant to section 16–1317 is not objected to by the parties interested, it shall be confirmed by the court, or, if the appraisement of the new jury is confirmed by the court, the Board of Commissioners shall pay the amount awarded by the jury out of the appropriation made therefor or deposit it in the manner as directed by section 7–215, and thereupon the title to the property condemned shall vest in the District of Columbia. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–608 (Mar. 3, 1901, ch. 854, § 488, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

§ 16–1320. Fixing time for return of verdict.

In every case involving the condemnation of real property under this subchapter, at the close of the hearing thereof, the court shall fix a time in which the jury shall return its verdict or the report to the court the reasons why the verdict or appraisement can not be returned by the time fixed. The court has discretion to extend the time for the return of the verdict or appraisement. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241 § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–609 (Mar. 3, 1901, ch. 854, § 489, 31 Stat. 1266; Mar 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

§ 16–1321. Abandonment of proceedings—Liability.

In a condemnation proceeding pursuant to this subchapter, it is optional with the Board of Commissioners to abide by the verdict of the jury and occupy the property appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proceeding. If the proceeding is abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of

the court reimburse the owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred by him or them in the proceeding. The sum or sums so awarded constitute a judgment or judgments against the District of Columbia. An owner is not entitled to the reimbursement in any case where the proceeding is abandoned at the request, or with the consent, of the owner of the property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–610 (Mar. 3, 1901, ch. 854, § 490, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1439; July 11, 1947, ch. 228, 61 Stat. 312).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Abandonment of proceeding

This section makes it optional with the Commissioners to abide by the verdict of the jury or, within a reasonable time to be fixed by the court, to abandon the proceeding. *Beyer* v. *Brownlow* (1922, 276 F. 460, 51 App. D.C. 92).

SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT

§ 16–1331. Acquisition of property in excess of needs.

In order to promote the orderly and proper development of the seat of government of the United States, the Board of Commissioners of the District of Columbia, and agencies of the United States authorized by law to acquire real property may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land, or rights in or on land or easements or restrictions therein, within the District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–612 (Apr. 11, 1935, ch. 57, § 1, 49 Stat. 152).

Minor changes are made in phraseology.

CROSS REFERENCES

Sale of public lands, see § 9–301 et seq.

Use of certified mail, see § 14–506.

§ 16–1332. Sale of excess property—Restrictions on use—Fair market value—Disposition of moneys.

(a) The Board of Commissioners of the District of Columbia and agencies of the United States authorized by law to acquire real property may, upon completion of public improvements:

(1) subdivide, and sell, at public or private sale, or exchange, any excess real property acquired pursuant to this subchapter; and

(2) to carry out such purposes, convey any property acquired in excess of that actually needed and which is not essential to the usefulness of the public works—

with such reservations concerning the future use and occupation of the property as, in their discretion, may be necessary to protect the public improvements.

(b) Property sold under this section shall be sold at not less than the fair market value at the time sold, as determined by appraisement of the assessor of the District of Columbia.

(c) Moneys received from sales or transfers of properties pursuant to this subchapter shall be covered into the Treasury of the United States, and where the property sold was acquired under an appropriation authorized for the use of the District of Columbia, moneys received from the sale shall be deposited in the Treasury to the credit of the revenues of the District of Columbia. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–613 (Apr. 11, 1935, ch. 57, § 2, 49 Stat. 152).

Section is based on part of section 16–613 of D.C. Code, 1961 ed. Remainder of section 16–613 is carried into sections 16–1333 and 16–1334 herein.

Changes are made in phraseology.

§ 16–1333. Notice of sale of excess property.

When excess real property is to be sold pursuant to section 16–1332, notice of not less than twenty days before the sale shall be published in a daily newspaper published in the District of Columbia, and notice shall be sent before the sale, by registered mail or by certified mail, to the last-known address of the persons listed on the records of the assessor of the District as the owners of the property abutting on the property to be sold. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–613 (Apr. 11, 1935, ch. 57, § 2, 49 Stat. 152; June 11, 1960, Pub. L. 86–507, § 1(47), 74 Stat. 203).

Section is based on part of section 16–613 of D.C. Code, 1916 ed. Remainder of section 16–613 is carried into sections 16–1332 and 16–1334 herein.

Changes are made in phraseology.

§ 16–1334. Retention, for public use, of excess property.

When the authorities of the District of Columbia or the United States having jurisdiction of real property, rights, or easements acquired pursuant to this subchapter, elect to retain any of them for the use of the District or the United States, they may use the property, rights or easements for park, playground, highway, or alley purposes, or for any other lawful purpose that they deem advantageous or in the public interest. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–613 (Apr. 11, 1936, ch. 57, § 2, 49 Stat. 152).

Section is based on part of section 16–613 of D.C. Code, 1961 ed. Remainder of section 16–613 is carried into sections 16–1332 and 16–1333 herein.

Changes are made in phraseology.

§ 16–1335. Availability of appropriations for purchase of excess property.

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and

expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–614 (Apr. 11, 1935, ch. 57, § 3, 49 Stat. 153).

Changes are made in phraseology.

§ 16–1336. Condemnation of excess real property by Board of Commissioners—Payment of awards, damages, and costs—No assessments for benefits.

(a) When, pursuant to this subchapter, excess real property is condemned by the Board of Commissioners, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter I of this chapter, sections 7–202 to 7–212, 7–213a, 7–214, 7–215, or sections 7–301 to 7–305, 7–313 to 7–318, 7–320, 7–321 and 7–323.

(b) Appropriations available for the payment of awards, damages, and condemnation proceedings pursuant to subchapter I of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings under the sections referred to by subsection (a) of this section for the acquisition of excess real property, as provided by this subchapter.

(c) Appropriations available for the payment of awards, damages, and costs in condemnation proceedings pursuant to subchapter I of this chapter or sections 7301 to 7–305, 7–313 to 7–318, 7–320, 7–321 and 7–323 may be used in the payment of awards, damages, and costs in condemnation proceedings thereunder for the acquisition of excess real property as provided by this subchapter.

(d) In all cases where excess real property is condemned, assessments for benefits may not be levied by the jury in respect to the acquisition of the property. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–615 (Apr. 11, 1935, ch. 57, § 4, 49 Stat. 153).

In subsec. (a), the reference to section 7–213a (of D.C. Code, 1961 ed.) is substituted for the references in section 16–615 of D.C. Code, 1961 ed., to sections 7–213 and 7–322 (of that Code), as the latter two sections were repealed in 1951 by the same act that enacted section 7–213a, which related to the same subject (compensation of jurors in condemnation cases). It was the legislative intent that any references in other laws to the provisions set out in sections 7–213 and 7–322 should, after the repeal thereof, mean the provisions set forth in section 7–213a.

Changes are made in phraseology and arrangement.

§ 16–1337. Condemnation of excess real property by United States agencies—Payment of awards, damages, and costs.

When excess real property is condemned by agencies of the United States, other than the Board of Commissioners of the District of Columbia, as provided by this subchapter, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter IV of this chapter, or any laws in effect at the time of the commencement of condemnation proceedings for the acquisition of real property in the District of Columbia for the use of the United States.

Appropriations available for the condemnation of property pursuant to subchapter IV of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings pursuant to that subchapter for the acquisition of excess real property as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–616 (Apr. 11, 1935, ch. 57, § 5, 49 Stat. 153).

Changes are made in phraseology.

§ 16–1338. Construction of subchapter.

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–617 (Apr. 11, 1935, ch. 57, § 7, 49 Stat. 154).

Changes are made in phraseology.

SUBCHAPTER IV.—REAL PROPERTY FOR UNITED STATES

§ 16–1351. Definition.

As used in this subchapter, "acquiring authority" means the head of an executive department or agency of the United States, or other officer of the United States, or board or commission of the United States, authorized by law to acquire real property in the District of Columbia for the construction of public building or work, or for parks, parkways, public playgrounds, or other public purpose. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–619 (Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415).

Section is based on part of section 16–619 of D.C. Code, 1961 ed. Remainder of section 16–619 is carried into sections 16–1301 and 16–1352 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Commission's authority to condemn 1
Constitutionality 2
Just compensation 3
Principles of equity in condemnation 4
Sites for government buildings 5
Summary judgment 6

1. Commission's authority to condemn

The acts of Congress establishing the National Capital Planning Commission constituted authority for acquisition by the Commission by condemnation of property for comprehensive development of the park, parkway and playground system of the National Capital. *United States* v. *Lots 800 in Square 1928 etc., et al.* (1959, 169 F. Supp. 904).

2. Constitutionality

Act permitting head of executive department to obtain realty in the District of Columbia for public buildings is constitutional as against the contention that it is invalid in that "it does not provide for the payment of damages to the owner of the land and the vesting of title in the United States contemporaneously." *Potomac Elec. Power Co.* v. *United States* (1936, 85 F. 2d 243, 66 App. D.C. 77, certiorari denied 57 S. Ct. 27, 299 U.S. 565, 81 L. Ed. 416).

3. Just compensation

United States government's right to take over private property under its power of eminent domain is subject to constitutional requirement that private property shall

not be taken for public use without just compensation. *United States* v. *One Parcel of Land etc.* (1955, 131 F. Supp. 443).

4. Principles of equity in condemnation

Determination of issues in a condemnation case rests upon broad principles of equity which go beyond technical requirements of local landlord and tenant law. *United States* v. *One Parcel of Land etc.* (1955, 131 F. Supp. 443).

Fifth Amendment of the federal Constitution contemplates that monies paid into common treasury by taxpayer shall be jealously guarded as a public trust against unfounded and unjust claims, but it also guarantees that government shall have regard for rights and welfare of its citizens and respect for restraints on its authority and shall deal fairly and equitably with each of them. *Id.*

5. Sites for government buildings

Under authority of this section and sections 16–620 to 16–644 and other acts the Secretary of the Treasury was authorized to acquire site for Department of Interior building. *Potomac Elec. Power Co.* v. *United States* (1936, 85 F. 2d 243, 66 App. D.C. 77, certiorari denied 57 S. Ct. 27, 299 U.S. 565, 81 L. Ed. 416).

6. Summary judgment

In government's action for taking of property, government's motions in the alternative for judgment on pleadings, to dismiss the answer for failure to state a claim, to strike the answer except one paragraph, or for summary judgment would be treated as a motion for summary judgment. *United States* v. *Lot 800 In Square 1928, etc., et al.* (1959, 169 F. Supp. 904).

In proceeding by the United States at the request of National Capital Planning Commission to condemn property for park, parkway and playground system of National Capital, wherein the United States filed a motion for summary judgment, and fact issues claimed to exist were not properly set forth in answer or by means of affidavit but were merely listed on a page of defendant's memoranda, and list did not consist of specific allegations or statements of fact but contained speculative questions as to what procedures might or might not have been followed by Commission in instituting the action, by reason of their source and their nature, such questions did not form a sound basis for determining that a genuine issue of material fact existed so as to preclude granting of summary judgment. *Id.*

§ 16–1352. Condemnation proceedings by Attorney General.

When, for the purposes specified by section 16–1351, it is deemed necessary or advantageous to do so, the acquiring authority may acquire real property in the District of Columbia in the name of the United States by condemnation under judicial process. The Attorney General of the United States, upon the request of the acquiring authority, shall institute a proceeding for the condemnation of the property in the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–619 (Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1994, ch. 139, § 127, 63 Stat. 107).

Section is based on part of section 16–619 of D.C. Code, 1961 ed. Remainder of section 16–619 is carried into sections 16–1301 and 16–1351 herein.

Words with reference to institution of the proceeding in the District Court, "holding a special term as a District Court of the United States,", are omitted as obsolete. Terms of the United States District Court for the District of Columbia are now governed by sections 138—141 of Title 28, United States Code.

The provision that the condemnation proceeding shall be "in rem" is omitted as unnecessary, as any proceeding to condemn property is a proceeding in rem. See, for example, note of the Advisory Committee on subdivision (g) of rule 71A of the Federal Rules of Civil Procedure, which rule was formulated by that committee.

Changes are made in phraseology.

Cross Reference

Condemnation proceedings in cases concerning alleys and minor streets, see § 7–301 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Discretionary authority 1
Tort actions 2

1. Discretionary authority

Statute authorizing District of Columbia Redevelopment Land Agency to acquire property in the name of the United States by condemnation under judicial process whenever in the opinion of the Authority it was necessary or advantageous to do so, was a grant of discretionary authority as to time of taking. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

2. Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within the meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 16–1353. Declaration of taking—Contents—Deposit—Transfer of title—Determination—Interest.

(a) In an action pursuant to this subchapter, the plaintiff may file in the cause, with the complaint or at any time before judgment, a declaration of taking signed by the acquiring authority empowered by law to acquire the property described in the complaint, declaring that the property is thereby taken for the use of the United States. The declaration of taking shall contain or have annexed thereto a—

(1) statement of the authority under which and the public use for which the lands are taken;

(2) description of the lands taken sufficient for the identification thereof;

(3) statement of the estate or interest in the lands taken for public use;

(4) plan showing the lands taken; and

(5) statement of the sum of money estimated by the acquiring authority to be just compensation for the property taken.

Upon the filing of the declaration of taking and of the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, vests in the United States of America, and the property shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation therefor vests in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the reg-

istry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16–628 of D.C. Code, 1961 ed. Remainder of section 16–628 is carried into sections 16–1354 and 16–1355 herein.

The term "plaintiff" is substituted for "petitioner", and the term "complaint" is substituted for "petition", to conform with the Federal Rules of Civil Procedure. See rule 71A thereof.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality 1
Controlling statute 2
Declaration of taking 3
Effectiveness of declaration 4
Judgment against United States 5
Liability for local assessment 6
Summary judgment 7

1. Constitutionality

Section permitting the advance taking of property for public use and providing for judgment against the United States with six per cent, interest until paid does not violate the Fifth Amendment to the Constitution. *Lee* v. *United States* (1932, 58 F. 2d 879, 61 App. D.C. 153).

2. Controlling statute

Section 16–619 relating to acquisition of property for public purposes, and not the Act Aug. 30, 1890, 26 Stat. 412 which had been eliminated from the Code as being obsolete and superseded, was controlling for purpose of authorizing National Capital Planning Commission to condemn property for park, parkway and playground system of the National Capital and such statute authorized declaration of taking by the Commission. *United States* v. *Lot 800 In Square 1928, etc., et al.* (1959, 169 F. Supp. 904).

3. Declaration of taking

Where government has not filed a declaration of taking, and judgment has not been entered nor has payment or deposit been made of an award of just compensation, title has not vested in the United States, and United States is free to abandon the taking or reduce the estate at any time, even if it has taken possession, and be liable only for actual use and occupancy or premises involved and for restoration damage. *United States* v. *One Parcel of Land etc.* (1955, 131 F. Supp. 443).

Where United States had been in possession of apartment building for more than three years, and title had vested in earlier proceeding by which such possession had been obtained, and judgment entered therein served as fair indication of amount of rental as might be expected to be awarded as just compensation, and United States had defined terms whereby it could terminate the estate, United States could not abandon the estate except pursuant to terms of the taking. *Id.*

Where, in notices by government to terminate estate obtained in prior proceeding in regard to use and occupancy of apartment building, there was uncertainty on part of government regarding plans to surrender premises, such notices were not effective. *Id.*

4. Effectiveness of declaration

A declaration of taking by National Capital Planning Commission was not ineffective on ground that commission did not presently have appropriated fund in order to convert land for authorized public purposes, where there was on deposit in registry of court a sum which was the amount of money estimated by the commission to be just compensation for the property taken, which money undoubtedly was intended by Congress for purchase of land involved. *United States* v. *Lot 800 In Square 1928, etc., et al.* (1959, 169 F. Supp. 904).

5. Judgment against United States

Judgment may be obtained against the United States in condemnation case, not enforceable by execution and levy. *Lee* v. *United States* (1932, 58 F. 2d 879, 61 App. D.C. 153).

6. Liability for local assessment

Where landowners contended that while proceeding to condemn land for street purposes instituted by District of Columbia was pending, Federal Government filed declaration of taking against their property and took title thereto whereupon compensation was paid to them by the Federal Government and that thereafter land was no longer subject to assessment for benefits by District of Columbia, issue thus tendered was not appropriate for decision in the condemnation proceeding. *Brown* v. *District of Columbia* (1944, 143 F. 2d 374, 79 U.S. App. D.C. 148).

7. Summary judgment

Claim by property owner that action of District of Columbia redevelopment land agency was arbitrary and capricious in that purpose for which her property was seized was not a public purpose and that the taking was therefore illegal, presented no issue of fact precluding the granting of summary judgment. *Mamer* v. *District of Columbia Redevelopment Land Agency* (C.A.D.C. 1960, 284 F. 2d 221).

§ 16–1354. Distribution of money deposited on declaration of taking—Judgment for deficiency.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16–1353, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency in the manner provided by rule 71A(j) of the Federal Rules of Civil Procedures. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16–628 of D.C. Code, 1961 ed. Remainder of section 16–628 is carried into sections 16–1353 and 16–1355 herein.

The provision that, after the final award, judgment shall be entered for the amount of any deficiency in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure is substituted for the provision that "If the compensation finally awarded in respect of said lands or any parcel thereof shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency". Subdivision (j) of rule 71A now governs on this point.

Changes are made in phraseology.

§ 16–1355. Time for surrender of possession under declaration of taking—Adjustment of charges.

Upon the filing of a declaration of taking provided for by section 16–1353, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiff. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16–628 of D.C. Code, 1961 ed. Remainder of section 16–628 is carried into sections 16–1353 and 16–1354 herein.

Changes are made in phraseology.

§ 16–1356. Setting date for trial.

In a proceeding pursuant to this subchapter, after all defendants have been served with notice, and there has been return of service, as provided by rule 71A(d) of the Federal Rules of Civil Procedure, and after defendants have appeared or answered in the manner provided by rule 71A(e) thereof, either personally or by their guardians ad litem or other legal representatives, or are in default, the case shall be regarded as ready for trial, and, upon the application of any party to the proceeding, the court shall forthwith set an early date to be fixed by it, not less than ten nor more than twenty days from the date of the application, for the trial of the issues of law and fact raised in the case, and the ascertainment of the compensation or damages to be awarded for the taking of the property to be condemned. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–629 (Mar. 1, 1929, ch. 416, § 11, 45 Stat. 1418).

Section is based on the first sentence of section 16–629 of D.C. Code, 1961 ed. Remainder of section 16–629 is carried into section 16–1357 herein.

In order to conform the provisions with the Federal Rules of Civil Procedure, which apply to condemnation proceedings in all United States district courts, the provisions of this section from the beginning to and through the word "default" are substituted for the following provisions of section 16–629 of D.C. Code, 1961 ed.: "When all the persons who have been summoned or published against in said case, as hereinbefore provided, have either answered or are in default as aforesaid, and all persons under legal disability have answered by their guardians ad litem, or in the judgment of the court ample opportunity has been given for the same". The words "as herein before provided", and "as aforesaid", in the preceding quoted provisions, refer to provisions of sections of D.C. Code, 1961 ed., which in this revision are omitted as superseded by some of the Federal Rules of Civil Procedure. Sections 16–621 to 16–624 thereof related to public notice of the proceeding by order of citation, contents of the order, publication, and notice thereof. These matters are now covered by rule 71A of the Federal Rules of Civil Procedure, and other rules thereof to which that rule refers. Sections 16–625 and 16–626 of the Code related to default in appearance, presumption of consent to the condemnation, and appearance after default, and were superseded by those rules (see particularly, rules 24, 55, and 71A(e) thereof). Section 16–627 of the Code related to the appointment of guardians ad litem for infants or incompetent persons, and was also superseded by the rules. See, particularly, rules 17(c) and 71A(g).

This section retains the provisions of section 16–629 of D.C. Code, 1961 ed., relating to the fixing of the date of trial, as they are not covered by the above-mentioned rules. Rule 40 relates to assignment of cases for trial, but the second sentence thereof provides that precedence shall be given to actions entitled thereto by any statute of the United States.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Valuation of property

Instruction was proper which stated that recent bona fide sales under fair market conditions, or recent contracts of sale under like conditions of any lot or lots, parcel or parcels within the limits of the area to be condemned, or in the vicinity thereof, or so situated as to have a bearing upon the market value of the land to be condemned, may be considered by the jury in so far as such sales or sale contracts may reasonably be regarded as throwing light upon the fair market value of the land to be condemned. *Loughran* v. *United States* (1933, 64 F. 2d 555, 62 App. D.C. 57).

§ 16–1357. Drawing of jurors, and selection of jury—Qualifications.

When the date for trial has been set, as provided by section 16–1356, the court shall thereupon order the jury commission to draw from the special box provided for by law the names of as many persons, not less than twenty, as the court directs, and to certify the names to the clerk of the United States District Court for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in the court on the day specially fixed for the trial of the cause. Before selecting or impaneling the jury, the court may cause a second, third, or other further list of prospective jurors to be drawn, certified and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto are real property owners in the District and are not in the service or employment of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–629 (Mar. 1, 1929, ch. 416, § 11, 45 Stat. 1418; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is based on all of section 16–629 of D.C. Code, 1961 ed., except the provisions thereof that are carried into section 16–1356 herein.

Changes are made in phraseology.

§ 16–1358. Oath of jurors.

The jurors selected and impaneled, as provided by section 16–1357, shall take an oath or affirmation, administered by the court, that they:

(1) are not interested in any manner in the property to be condemned;

(2) are not, to their knowledge, related to any person interested in the property; and

(3) will, impartially and to the best of their judgment, ascertain, appraise, and award just compensation for the property to be condemned and taken in the proceeding.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–630 (Mar. 1, 1929, ch. 416, § 12, 45 Stat. 1418).

Changes are made in phraseology.

§ 16–1359. Inspection of property by jury—Presence of parties.

After being selected, impaneled, and sworn, as provided by sections 16–1357 and 16–1358, and before hearing the evidence, the jury, in order to inspect the property to be acquired, shall be taken upon the property by the United States marshal at a time fixed by the court. All parties in interest, their attorneys, and representatives have the right to be present at the inspection. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–631 (Mar. 1, 1929, ch. 416, § 13, 45 Stat. 1418).

Changes are made in phraseology.

§ 16–1360. Trial—Evidence—Measure of compensation.

After the inspection provided for by section 16–1359, and the jury has returned to the court, the trial of the cause shall be proceeded with before the court and jury. Any person who has appeared in the cause claiming any right, title, interest, or estate in the land to be taken, or compensation on account of its taking, has the right to submit evidence concerning the value of the property, parcel by parcel, the nature and extent of his right, interest, or estate therein, and the compensation justly due for the taking of the property. A new structure or substantial alteration of a permanent nature, the purpose or natural effect of which is to enhance the value of the property to be taken, erected, or made thereon after the institution of the condemnation proceedings may not be taken into consideration in assessing and awarding compensation for the property. When the property to be valued has been taken by virtue of a declaration of taking, as provided by section 16–1353, it shall be valued for the purposes of compensation as of the date of the taking. When, by act of the owner or other party claiming to be entitled to compensation, the value of the property for the use for which it is to be taken has been diminished, as by cutting trees, excavating, grading, or otherwise altering its physical condition, allowance, if the plaintiff so elects, shall be made in accessing compensation for the diminution in value. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–632 (Mar. 1, 1929, ch. 416, § 14, 45 Stat. 1418).

The term "plaintiff" is substituted for "petitioner" to conform with terminology in the Federal Rules of Civil Procedure, which, under rule 71A thereof, generally apply in condemnation proceedings.

The final sentence of section 16–632 of D.C. Code, 1961 ed., provided as follows: "Every party, whether petitioner or respondent, may except to any ruling of the court admitting or excluding evidence, granting, rejecting, or modifying prayers for instruction, or other ruling made in the cause in like manner as in other civil trials". This sentence is omitted as obsolete and superseded by rule 46 of the Federal Rules of Civil Procedure, which provides that: "Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him". This rule, under rule 71A, applies to condemnation proceedings, as well as to other civil actions.

Changes are made in phraseology.

Additional provisions relating to the right to the presentation of evidence are contained in subdivision (e) of rule 71A of the Federal Rules of Civil Procedure, referred to above, which among other things provides that a defendant waives all defenses and objections not presented in his answer, but that "at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award".

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof 1
Evidence 2

1. Burden of proof

In a condemnation proceeding, the party who offers evidence to prove the price paid for parcels other than those involved following negotiation and purchase, has the burden of establishing as a preliminary fact that purchase was made without compulsion, coercion, or compromise. *Hannan* v. *U.S.* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

2. Evidence

In proceeding to condemn property under urban redevelopment plan, evidence sustained amount of verdict. *Brabner-Smith* v. *District of Columbia Redevelopment Land Agency* (C.A.D.C. 1960, 284 F. 2d 229).

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, opinion evidence concerning whether price paid by defendant for one lot in issue was reasonable was properly excluded, where evidence related to a sale made 15 years before commencement of proceeding, and record failed to reveal witness' qualifications to testify concerning changed conditions or to give other than hearsay testimony. *Hannan* v. *U.S.* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

In a condemnation proceeding, the reception of evidence offered to prove the price paid for parcels other than those involved following negotiation and purchase calls for the exercise of discretion by the trial court. *Id.*

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, exclusion of evidence of an offer to purchase made to property owner by a third person was not error where consideration offered consisted in part of other property and consequently involved collateral issues concerning its value. *Id.*

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, even if evidence offered to prove price paid by the United States following negotiation and purchase for parcels other than those of defendants was admissible, exclusion of that evidence was not error where defendants did not establish as a preliminary fact that purchase was made without compulsion, coercion, or compromise. *Id.*

§ 16–1361. Verdict.

At the close of the evidence in a proceeding pursuant to this subchapter, the court shall charge the jury and furnish them with a written form to be used in returning their verdict. The members of the jury may separate when not engaged in the consideration of their verdict. When the jury, or a majority thereof, have agreed upon their verdict they shall, through their foreman, so notify the court, which shall thereupon pass an order setting a day for the return of the verdict in open court. The verdict shall be in writing subscribed by the jurors concurring therein, and shall set forth, parcel by parcel, the compensation to be paid for the taking of the lands to be condemned. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1951 ed., § 16–633 (Mar. 1, 1929, ch. 416, § 15, 45 Stat. 1419).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Motion for new trial 1
Permissive nature of proceedings 2

1. Motion for new trial

Where in a proceeding by the United States to condemn property in the District of Columbia, appellant did not file motion for a new trial, but objected to the finding of the jury as if action had been brought by the District; said objection was treated as motion for new trial. *Willis* v. *United States* (1938, 99 F. 2d 362, 69 App. D.C. 129).

2. Permissive nature of proceedings

The provisions appearing in § 16–634 et seq. relating to acquisition of land in the District of Columbia for use of the United States concerning motions for new trial and other proceedings after verdict are "permissive", in sharp contrast to corresponding provisions appearing in § 16–607 relating to acquisition of land for the District of Columbia. *Hannan* v. *U.S.* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

§ 16–1362. Fixing date for new trial—New jurors.

If a verdict rendered pursuant to section 16–1361, or any award contained therein, is set aside or vacated, the court shall—

(1) grant a new trial with respect to the property as to which the verdict or award is set aside or vacated;

(2) fix a date for the new trial; and

(3) order a new panel of prospective jurors to be drawn, certified, or summoned as provided by section 16–1357.

The court shall then proceed with the cause as if a verdict or award had not been rendered. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–634 (Mar. 1, 1929, ch. 416, § 16, 45 Stat. 1419).

The first sentence of section 16–634 of D.C. Code, 1961 ed., provided, as follows: "The court shall have power to set aside or vacate the verdict of the jury, or any award contained therein, and to grant a new trial upon the same grounds as in other trials at law and upon the ground that said verdict, or any award contained therein is, in the judgment of the court, grossly excessive, or inadequate, or otherwise unreasonable or unjust". This sentence is omitted as covered by the Federal Rules of Civil Procedure, which under rule 71A thereof, generally apply to condemnation proceedings. See, particularly, rules 50, 58–62.

Changes are made in phraseology.

§ 16–1363. Judgment.

Judgment upon a verdict returned pursuant to section 16–1361 or any award contained therein shall be entered against the United States in favor of the parties entitled for the sums awarded as just compensation, respectively, for the property condemned for the use of the United States. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–636 (Mar. 1, 1929, ch. 416, § 18, 45 Stat. 1420).

Words "Judgment upon a verdict returned under section 16–1361 or any award contained therein shall be entered against" are substituted for words "In the event that any verdict or any award contained therein shall become final by lapse of time or that any motion filed to set aside or vacate the same or to grant a new trial in respect thereof shall have been denied, or overruled, the court shall enter judgment against" as the time for entry of judgment, and other matters relating thereto, are now covered by the Federal Rules of Civil Procedure which, under rule 71A thereof, now generally apply to condemnation proceedings. See rule 58 of the rules. See, also, rules 59—62 thereof relating to new trials, amendments to judgments, relief from judgment or order, harmless error, and stay of proceedings to enforce a judgment.

Changes are made in phraseology.

§ 16–1364. Force and effect of judgment—Payment.

A final judgment rendered against the United States pursuant to this subchapter has like force and effect as a money judgment rendered against the United States by the Court of Claims in a suit in respect of which the United States has expressly consented to be sued. The amount of the final judgment shall be paid out of any specific appropriation applicable to the case. If a specific appropriation does not exist, the judgment shall be paid in the same manner (except with respect to interest) as judgments rendered by the Court of Claims in cases under its general jurisdiction. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–637 (Mar. 1, 1929, ch. 416, § 19, 45 Stat. 1420).

Changes are made in phraseology.

§ 16–1365. Appeal—Deficiency judgment.

A party aggrieved by a final judgment in a proceeding pursuant to this subchapter may appeal therefrom to the United States Court of Appeals for the District of Columbia Circuit. The appeal, or any bond or undertaking given therein, does not operate to prevent or delay the vesting of title to the property in the United States, but upon the filing of a declaration of taking, or, if a declaration of taking is not filed, upon payment to the party entitled, or deposit in the registry of the court, of the amount awarded by the judgment, title vests in the United States, saving to all parties their right to just compensation. If the compensation finally awarded and adjudged for the property exceeds the amount awarded and adjudged by the judgment appealed from, the court shall enter judgment for the deficiency with interest as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–638 (Mar. 1, 1929, ch. 416, § 20, 45 Stat. 1420; June 7, 1934, ch. 426, 48 Stat. 926).

The provision that, upon the appeal, the U.S. Court of Appeals should have power to review the judgment and affirm, reverse, or modify the same as on appeals in other actions at law, is omitted as unnecessary and covered by section 2106 of Title 28, United States Code.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Right to appeal

Defendants were not foreclosed from maintaining an appeal from judgment entered in condemnation proceeding by their failure to move to set aside the verdict and for a new trial, where proceeding was brought to acquire land in the District of Columbia for use of the United States. *Hannan* v. *U.S.* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

§ 16–1366. Payment of compensation into court—Vesting of title.

Payment into the registry of the court for the use of the parties entitled of the sum adjudged to be just compensation for the property to be condemned and taken, or for any parcel thereof, or any interest therein, pursuant to this subchapter, constitutes payment of the compensation. Upon the payment, the plaintiff is entitled to an order declaring that the title to the property in respect of which the compensation is so paid is vested in the United States of America. The money so paid into the registry of the court shall be deemed to be vested in the persons owning or interested in the property, according to their respective estates and interest, and the money shall take the place and stand in lieu of the property condemned. The court, upon the application

of the plaintiff or of any party in interest, may determine and direct who is entitled to receive payment of the money so paid into the registry, and, in its discretion, order a reference to the auditor of the court or a special master to ascertain the facts on which the determination and direction are to be made. (Dec. 23, 1963, 77 Stat. 580, Pub L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–639 (Mar. 1, 1929, ch. 416, § 21, 45 Stat. 1420).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Interest

Where judgment was entered June 30 ratifying condemnation award returned by jury on June 28 but full amount of award was not deposited in registry of court until October 20 and owners continued to hold title as well as possession of property and receive income from it until that time, and proceedings were taken under statute which did not vest title in government until payment of award was made into registry of court, owners were not entitled to have interest added as part of just compensation to amount awarded by jury. *K. Gould et al.* v. *United States* (1962, 301 F. 2d 557, 112 U.S. App. D.C. 233).

§ 16–1367. Delivery of possession.

Where possession has not been awarded pursuant to a declaration of taking, and the adjudged compensation has been paid into the registry as directed by the judgment of the court and a certified copy of the judgment, with a certificate of the clerk of the court showing the payment, has been served upon the person in possession of the property, he shall, upon demand, deliver possession thereof to the plaintiff. If possession is not delivered when so demanded, the plaintiff may apply to the court without notice, unless the court requires notice to be given, for a writ of assistance, and the court, upon proof of the service of the copy of the final order or judgment and certificate of the clerk showing payment as referred to in this section, shall thereupon cause the writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–640 (Mar. 1, 1929, ch. 416, § 22, 45 Stat. 1421).

Changes are made in phraseology.

§ 16–1368. Additional powers of court.

Where the mode or manner of conducting a proceeding pursuant to this subchapter is not expressly provided for by law or rules of court in force under authority of law, the court may make all necessary orders and give all necessary directions to carry into effect the object and intent of this subchapter or any other laws conferring authority to acquire real property for the use of the United States. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–642 (Mar. 1, 1929, ch. 416, § 24, 45 Stat. 1421).

Words "or rules of court in force under authority of law" are inserted because, under rule 71A of the Federal Rules of Civil Procedure, those rules now generally apply in condemnation proceedings. Rule 71A, itself, contains a number of provisions relating to practice and procedure in such proceedings. Further, rule 83 of the rules permits district courts to make and amend rules governing their practice and to regulate their practice in any manner, not inconsistent with the said Federal Rules of Civil Procedure.

Changes are made in phraseology.

Chapter 15.—FORCIBLE ENTRY AND DETAINER

Sec.
16–1501. Definition—Summons.
16–1502. Service of summons.
16–1503. Judgment and execution for possession.
16–1504. Certification to District Court upon plea of title—Undertaking.
16–1505. Conclusiveness of judgment.

§ 16–1501. Definition—Summons.

When a person detains possession of real property without right, or after his right to possession has ceased, the District of Columbia Court of General Sessions, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–735, 11–751a (Mar. 3, 1901, ch. 854, § 20, 31 Stat. 1193; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555; June 18, 1953, ch. 130, § 1, 67 Stat. 66; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

CROSS REFERENCE

Procedure, see § 13–101.

See also, §§ 22–3101, 45–820 to 45–910.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Agreements as precluding recovery

Where tenant agreed to rent basement to landlord's grantee, entry of landlord's grantee into basement was not forcible so as to authorize tenant to recover, against landlord's grantee as for forcible entry. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

In owner's action to recover apartment from former tenant's estranged wife who had moved out of apartment during marital difficulties and who had resumed occupancy after tenant had surrendered his tenancy, evidence relating to manner in which wife re-entered apartment warranted finding that wife's re-entry and detention of possession was "forcible" within this section. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

2. Appeal

Proceedings in appeal in cases of forcible entry and detainer, which are regulated by §§ 1232, 1233 of the 1901 Code, are different from those which govern appeals in ordinary cases. *Dowling* v. *Buckley* (27 App. D.C. 205).

The complaint should be sufficient to advise the tenant of the breach which the landlord claims gives him a right to recover possession of the property, and if the complaint states only one ground, the landlord must be confined to that ground on appeal. *Davis* v. *Taylor* (1922, 276 F. 619, 51 App. D.C. 97).

In forcible entry and detainer action, exclusion of witnesses was discretionary with the trial judge, and, where it was not shown that denial of motion was prejudicial to appellant, there was no basis for review by appellate court. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

3. Bond

Defendant, in order to perfect his appeal from justice of peace, in landlord and tenant case, need not give supersedeas bond. *Dowling* v. *Buckley* (27 App. D.C. 205).

Bond given on appeal from justice of peace in a landlord and tenant case must be entered by two sureties in order to operate as a supersedeas. *Id.*

4. Concurrent actions

A landlord could maintain action against tenant in District of Columbia District Court for arrears of rent and an action against tenant in the municipal court for possession of leased premises. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400).

5. Construction of prior law

Code provision applicable, although title is claimed under instrument executed prior to adoption of code. *Green* v. *McIntire* (42 App. D.C. 250).

6. Counterclaims

Court should not have entertained the counterclaims of defendant in suit in which possession was sought on the grounds of unlawful entry and detainer. Though it has been held that where a tenant is sued for possession for nonpayment of rent, he may defend by an equitable defense sufficient to defeat the claim for rent or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action, and where, as here, the suit was not for nonpayment and the counterclaim sounded in tort, this rule does not apply. *Bellmore* v. *Baum* (D.C. Mun. App. 1949, 68 A. 2d 588).

7. Damages

Quaere: Whether landlord can recover damages for loss of rental of entire building when tenant leases only a part thereof. Such action, however, cannot be maintained under this section. *Desio* v. *Hutchinson* (36 App. D.C. 68).

8. Directed verdict

Where subtenant claimed in opening statement that tenant in consideration of increased rent had orally agreed that subtenant might remain in possession as long as tenant's lease remained in effect, and that subtenant had thereafter paid such increased rent and had made certain substantial improvements on the premises, direction of verdict for tenant was error. *De Grazia* v. *Anderson* (D.C. Mun. App. 1948, 62 A. 2d 194).

9. Discretion of court

In forcible entry and detainer action against a Chinese, appointment of principal defendant's niece as his interpreter rested in trial court's discretion. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

In forcible entry and detainer action against a Chinese, trial court did not abuse its discretion in appointing principal defendant's niece as his interpreter when his testimony had no substantial bearing upon the factual issues. *Id.*

10. Emergency Rent Control Act

The effect of Emergency Rent Control Act, § 45–1605, restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Warthen* v. *Lamas* (D.C. Mun. App. 1945, 43 A. 2d 759).

Under the Emergency Rent Control Act, § 45–1605, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to ground upon which landlord may claim right of possession, remains the same as it was previously. *Id.*

A roomer, although a tenant under Emergency Rent Control Act, § 45–1611(f), who had allegedly failed to pay rent could be evicted without institution of court proceedings for possession, in absence of any reference to roomers in this section relating to summary proceedings for possession. *Tamamian* v. *Gabbard* (D.C. Mun. App. 1947, 55 A. 2d 513).

11. Equitable relief

Equity will relieve against a forfeiture caused by nonpayment of rent unless it is unjust or was inequitable to do so; the only condition precedent to such relief being the tender or payment of the arrears with accrued interest and tender, here, avoided forfeiture of the lease. *Burrows Motor Company* v. *Davis* (D.C. Mun. App. 1950, 76 A. 2d 163).

12. Evidence

Evidence in eviction proceeding supported finding that defendant was a roomer, rather than a tenant, and thus subject to eviction by summary proceeding. *Levy* v. *Parks et ano.* (D.C. Mun. App. 1960, 157 A. 2d 462).

In forcible entry and detainer action by tenant against landlord's grantee, tenant's denial that he had made any "agreement" with agent of landlord's grantee to rent basement to him was a "conclusion" insufficient to contradict testimony of landlord's grantee. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

Evidence supported finding that there was no unlawful delegation of authority to vice president of real estate company serving as agent of insurance company in managing building owned by insurance company by president of insurance company in authorizing vice president of realty company to verify complaint in action to recover one of storerooms in building from tenant after expiration of lease. *Fowei* v. *Continental Life Ins. Co.* (D.C. Mun. App. 1947, 55 A. 2d 205).

13. Force, necessity of

In action brought under this section giving Municipal Court for District of Columbia jurisdiction of action brought against person charged with having forcibly entered and detained real property, there must be actual force employed in the entry or in detention of possession or such threats and menaces of personal violence as will prevent one through fear from asserting his rights. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

14. Forfeiture of leasehold

Forfeiture of a leasehold for conditions broken, and restrictions upon the right to assign are looked upon with disfavor. *Burrows Motor Company* v. *Davis* (D.C. Mun. App. 1950, 76 A. 2d 163).

The transfer of a portion of a tenant corporation's stock did not constitute an assignment of its lease in violation of its covenant not to assign without the lessor's consent, and judgment awarded to landlord must be reversed. *Id.*

15. Improvements

Where tenant of a row house, shortly before expiration of a five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to

terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D.C. Mun. App. 1945, 43 A. 2d 759).

16. Issues triable

Landlord's suit for possession of leased premises on ground of nonpayment of rent under this section is statutory substitute for ancient action of ejectment, and issue to be tried is the right to possession. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

17. Jurisdiction

Municipal court had jurisdiction of subject-matter involved in landlord and tenant proceeding and also over the person of defendant in the case, who appeared and made a defense, and the judge was not liable in civil action for the issuance of writ of restitution. *Spruill* v. *O'Toole* (1934, 74 F. 2d 559, 64 App. D.C. 85, certiorari denied 55 S. Ct. 406, 294 U.S. 707, 79 L. Ed. 1242, rehearing denied 55 S. Ct. 510, 294 U.S. 732, 79 L. Ed. 1261).

The jurisdiction of Municipal Court for District of Columbia to render judgment for possession of real estate is limited to those cases provided for by this section. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

The District of Columbia Municipal Court has jurisdiction to try actions involving possession of realty. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400, modified on other grounds, 54 A. 2d 144).

The jurisdiction of the Municipal Court over summary suits to recover possession of real property under this section is limited explicitly to actions by landlords against tenant. *Spruill* v. *Brooks* (D.C. Mun. App. 1949, 68 A. 2d 204).

Municipal court should not reject jurisdiction unless and until it is made to appear that the title to land is necessarily directly in issue between the parties, since this is a mandatory requirement provided for by statute. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

18. Liability for marshal's negligence

If United States Marshal, acting within order of Municipal Court for District of Columbia issuing writ of restitution, negligently damaged property of tenant in moving it to sidewalk, neither landlord nor landlord's agent would be liable for the results of this negligence unless landlord or its agent participated in the wrongful act. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

19. "Lodger," "tenant," distinguished

Where apartment hotel had been licensed as a "hotel" by superintendent of licenses, full hotel service was furnished all occupants without extra charge, all rates were by the day with discount in case an apartment was occupied a week or more, and when defendant rented first furnished apartment he signed usual type of registration card used by hotels agreeing to pay certain sum per day, and thereafter moved to another furnished apartment without signing a new registration card and agreed to pay an increased rate, status of defendant was that of a "lodger" rather than a "tenant" and hence he was not entitled to notice to quit because of nonpayment. *Davis* v. *Francis Scott Key Apartments* (D.C. Mun. App. 1958, 140 A. 2d 188).

20. Merits

Where there was a voluntary dismissal by landlord of his action to recover possession of leased premises, prior to trial, and no issue was adjudicated, intervenor was not entitled to a judgment on the merits. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

21. Money judgment

The recovery of a money judgment for rent in landlord's action for possession of leased premises on ground of nonpayment of rent is but incidental to the main action, which remains basically one for possession. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

22. Nature of possessory action

A landlord's action for possession of leased premises for nonpayment of rent is statutory substitute for the ancient remedy of ejectment. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400, modified on other grounds 54 A. 2d 144).

23. Notice

Tenant is entitled to 30-day notice to quit before institution of summary proceedings for possession. *Thornhill* v. *Atlantic Life Ins. Co.* (1934, 70 F. 2d 846, 63 App. D.C. 184).

Where landlord served notice to quit on tenant but shortly thereafter commenced suit for possession before such notice had run its statutory time, and suit was dismissed on tenant's motion for failure to give notice to quit, dismissal of action did not prevent bringing of subsequent action based on said notice. *Royall* v. *Weitzman* (D.C. Mun. App. 1956, 125 A. 2d 680).

Sufficient notice of termination of a month to month tenancy does not in and of itself allow institution of an action for possession, since notice merely cuts off future expectancy of a continuation of the tenancy for one or more terms, and thereupon a tenancy for the terminal month runs its course, and upon the occurrence of both events landlord may maintain action for possession, as tenant is then holding over. *Zoby* v. *Kosmadakes* (D.C. Mun. App. 1948, 61 A. 2d 618).

A notice to quit is a condition precedent to filing of action by landlord to recover possession of premises from tenant, but is not jurisdictional. *Zindler* v. *Buchanon* (D.C. Mun. App. 1948, 61 A. 2d 616).

24. Parties

A realty dealer acting as owner's rental agent for percentage of rents is not a party in interest such as is entitled to conduct a landlord and tenant proceeding. *Heiskell* v. *Mozie* (1936, 82 F. 2d 861, 65 App. D.C. 255).

In action by purchaser of dwelling house against vendors to recover possession, wherein certain persons living in the house intervened, claiming to be tenants, intervenors to establish their right to intervene, as well as their defense, were required to prove that they were tenants, since, if they were merely roomers, they had no standing in action. *Taylor* v. *Dean et al.* (D.C. Mun. App. 1951, 78 A. 2d 382).

Where husband and wife own property by the entireties, a possessory action against a tenant may be brought by either, and a judgment in such an action inures equally to benefit of both. *Zoby* v. *Kosmadakes* (D.C. Mun. App. 1948, 61 A. 2d 618).

In owner's action to recover possession of apartment rented by defendant's husband, defendant was a proper party and owner was not required to name husband as a party defendant, where husband had surrendered key after defendant removed furniture and left apartment at time of marital difficulties and had stated to owner's representative that husband was finished with apartment and owner in reliance thereon had rented apartment to third party. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

25. Person aggrieved

Where lessees under concurrent lease, which had been executed by lessors during continuance of monthly tenancy under prior lease of same premises and simultaneously with assignment of prior lease to the new lessees, gave notice to monthly tenant pursuant to provisions of prior lease, such lessees were entitled to possession of premises, and were therefore "persons aggrieved" who were by statute entitled to bring summary proceedings to obtain possession *Gulf Motors Inc. et ano.* v. *Fenner et ano.* (D. C. Mun. App. 1955, 114 A. 2d 543).

One suing under this section for recovery of leased premises was only obliged to establish that he was the person aggrieved by tenant's failure to vacate. *J. & J. Slater, Inc.* v. *Brainerd* (D.C. Mun. App. 1945, 43 A. 2d 714).

Provision in lease for abatement of rent if lessor should be unable to deliver possession did not prevent lessor from being "person aggrieved" who could sue former tenant for possession, in absence of evidence that lessor had yielded right to sue to new tenant or had done anything to extinguish his own title. *Id.*

Owner was proper party to maintain suit against tenant to recover business premises at expiration of term lease, since he was a "person aggrieved" within this section

authorizing municipal court to issue summons on complaint under oath of "person aggrieved" to recover premises detained, notwithstanding lease was made in the name of owner's agent. *Bell* v. *Westbrook* (D.C. Mun. App. 1947, 50 A. 2d 264).

26. Petition

Complaint alleging that defendant obtained possession of premises by fraud and had trespassed thereon and that he had refused to surrender possession, but not alleging that defendant entered by actual force or that he retained possession by force, or by menaces or other acts legally equivalent to force, did not state a case of forcible entry and detainer within jurisdiction of Municipal Court for District of Columbia. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

27. Pleading

Although proceedings in landlord and tenant actions are informal, tenant is entitled to be informed by complaint of nature of recovery sought against him. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

If a landlord seeks a money judgment for rent in action to recover leased premises on ground of nonpayment of rent, he must set forth his claim for such in his complaint. *Id.*

Where action by husband and wife as landlords for possession of housing accommodations was brought as a summary proceeding, the verification of complaint by husband, for himself and as agent for his wife, was authorized by this section providing that complaint shall be verified by person aggrieved or by his agent or attorney having knowledge of the facts. *Wynn* v. *Washington* (D.C. Mun. App. 1947, 53 A. 2d 275).

28. Purpose

This section giving Municipal Court for District of Columbia jurisdiction of actions of forcible entry and detainer is intended to provide a summary remedy in definitely limited classes of cases, and is not a substitute for action of ejectment. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

29. Reentry without legal process

This section providing that whenever any person shall detain possession of realty without right, or after his right to possession shall have ceased, it shall be lawful for municipal court, on complaint under oath verified by person aggrieved by such detention or by his agent or attorney having knowledge of the facts, to issue a summons to party complained of to appear and show cause why judgment should not be given against him for restitution of possession, does not abolish the common law right of a landlord, when tenant's right to possession has ceased, to enter on leased premises and take possession thereof without use of legal process. *Snitman* v. *Goodman et al.* (D.C. Mun. App. 1955, 118 A. 2d 394).

30. Res judicata

Where suit filed on March 17, 1942, was essentially one for trespass with conversion of personal property laid in aggravation of damages, in subsequent statutory action to recover possession allegedly withheld since April, 1942, evidence was insufficient to sustain defendant's plea of res judicata based on judgment in the former suit. *Kincade* v. *Wah* (D.C. Mun. App. 1944, 38 A. 2d 112).

A consent judgment awarding plaintiff husband possession of premises, in action brought by husband alone against defendant as tenant of property owned by husband and wife as tenants by the entireties, which judgment necessarily determined defendant's status as a tenant, was res judicata on that issue in subsequent suit brought by husband and wife against defendant to recover rent. *David* v. *Nemerofsky* (D.C. Mun. App. 1945, 41 A. 2d 838).

Where husband and wife owned realty as tenants by the entireties, as respects doctrine of res judicata, the wife should be regarded as in "privity" with husband, which denotes mutual or successive relationship to the same rights of property. *Id.*

31. Right to possession

Where party occupying landowner's premises had no right to possession but his original entry had been lawful, and where action under this section was not available because relation of landlord and tenant had not existed, ejectment was only appropriate remedy. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Where plaintiff sued for possession of property, which it had purchased at foreclosure sale, against defendant who had previously owned the property but had defaulted on the second trust note, the defense that, when the deed of trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605, is not applicable where premises are not housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 587).

32. Summary proceedings

Summary proceedings under R.S., D.C. 684, cannot be maintained unless conventional relation of landlord and tenant exists between the parties. *Willis* v. *Eastern Trust & B. Co.* (1898, 18 S. Ct. 347, 169 U.S. 295, 42 L. Ed. 752).

Under this section providing that whenever any person shall retain possession of realty without right, or after his right to possession shall have ceased, Municipal Court of District of Columbia may issue summons to party complained of to appear and show cause why judgment should not be given against him for restitution of possession, remedy is summary in character, and the issue to be tried in such cases is the right of possession. *Rudder* v. *U.S.A.* (D.C. Mun. App. 1954, 105 A. 2d 741, reversed on other grounds, 226 F. 2d 51, 96 U.S. App. DC 329).

33. Surrender of tenancy

Where wife removed furniture and left apartment and husband, who was the tenant, surrendered his tenancy, wife had no further rights in premises and her forcible re-entry and detention of possession was unlawful so as to entitle owner to recover possession under this section. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

34. Tenant in common

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *Bagby* v. *Honesty* (D.C. Mun. App. 1959, 140 A. 2d 786).

35. Title not issue

If complaint were forcible entry and detainer, a claim of title by the defendant would be a proper defense to the action. *Loring* v. *Bartlet* (4 App. D.C. 1).

In proceedings for forcible entry and detainer, the title is not tried and is not at issue, but solely the right to the possession. *Brown* v. *Slater* (23 App. D.C. 51).

Right to possession of alleged purchaser at trustee's sale, not proved where tenant under 5-year lease continued to comply with said lease and dealt throughout with the same agent and knew nothing of the sale. *Capital Apartment Corp.* v. *Vassos* (1933, 65 F. 2d 482, 62 App. D.C. 136).

36. Trespass, action for

The action of trespass to realty contemplated by section 11–704 is one for damages, and said section was not applicable to give Municipal Court for District of Columbia jurisdiction of action to obtain possession of realty. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

Forcible entry and detainer is not a substitute for trespass, and the actions are not the same. *Id.*

37. Verification

Where affidavit in action for possession of realty purported to be the affidavit of plaintiff corporation, affidavit contained no mention of any individual, making the affidavit as agent for the corporation, and signature of officer was not made as officer's individual signature, but as signature of corporate officer, the affidavit was fatally defective. *Strand Restaurant Co.* v. *Parks Engineering Co.* (D.C. Mun. App. 1952, 91 A. 2d 711).

§ 16–1502. Service of summons.

The summons provided for by section 16–1501 shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of

the action. If the defendant has left the District of Columbia, or cannot be found, the summons may be served by delivering a copy thereof to the tenant, or by leaving a copy with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one is in actual possession of the premises, or residing thereon, by posting a copy of the summons on the premises where it may be conveniently read. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–736 (Mar. 3, 1901, ch. 854, § 21, 31 Stat. 1193).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Challenging service of process

It is a general rule, with limited exceptions, that the question of defective service can be raised only by one on whom the attempted service was made and that one defendant has no standing to question the service on a co-defendant. Therefore, a motion to quash service made by one not even a party ought not to be heard. *Everett* v. *Miller* (D.C. Mun. App. 1949, 67 A. 2d 399).

2. Confession of judgment

A judgment in favor of landlord suing tenant for possession of leased premises was void for failure of court to acquire jurisdiction over tenant who was not served with process and who did not voluntarily appear, notwithstanding that tenant had signed "confession of judgment", where "confession of judgment" did not purport to contain a power of attorney authorizing landlord's attorney to appear for tenant and confess judgment. *Sandler* v. *Kass Realty Co.* (D.C. Mun. App. 1946, 48 A. 2d 617).

3. Construction

For the purpose of this section, a person below the age of sixteen years does not come within the term "any one". *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

Requirements of the statutory phrase "cannot be found" were met by the deputy marshal in posting summons on door. *Id.*

4. Delay in motion to vacate judgment

Where extenant's motion to vacate default judgment in action for possession of property was filed more than a year after she had been evicted pursuant to the judgment and writ of restitution, trial court was justified in denying motion. *Renshaw* v. *Swift et ano.* (D.C. Mun. App. 1956, 123 A. 2d 618).

5. Posting on door

In suit to recover possession of house, process was not defective on ground that marshal, without using diligent effort to obtain personal service, posted summons on door, where record disclosed service in strict compliance with this section. *Gordon* v. *Tino* (D.C. Mun. App. 1946, 50 A. 2d 593).

Where deputy marshal returned to premises three times with no response, and finally fastened the two summonses flat against the door, valid service was made, since defendant was not to be found and no one over sixteen could be said to be in possession. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

6. Return

Where a valid service had been effected in landlord's action against tenant for possession of realty, either by delivery of copy to one in possession of realty, or by posting copy on realty, service was valid regardless of whether marshal's return correctly showed the method by which the service was effected. *Etelson* v. *André* (D.C. Mun App. 1948, 61 A. 2d 806).

7. Substantial compliance

Service of summons by leaving a copy with a person over 16 years of age in possession of the premises and a return to that effect by the marshal was a substantial compliance with this section. *Bliss* v. *Duncan* (44 App. D.C. 93). See, also, *Settlemier* v. *Sullivan* (1878, 97 U.S. 444, 7 Otto 444, 24 L. Ed. 1110).

8. Substitute service

Where marshal returned in afternoon after receiving no response when he had rung bell several times on morning visit, and maid refused to take paper marshal requested her to take, and marshal tacked it on the door, failure to make more than two attempts to effect personal service was not as a matter of law a lack of due diligence to effect personal service so as to invalidate substituted service under this section prescribing methods of service available in summary actions for possession of realty. *Etelson* v. *André* (D.C. Mun. App. 1948, 61 A. 2d 806).

9. Voluntary appearance

The voluntary appearance of tenant, through its attorney, gave the court jurisdiction to enter judgment in favor of landlord suing for possession of leased premises, notwithstanding that tenant was not served with process. *Crescent Cafe Co.* v. *Kass Realty Co.* (D.C. Mun. App. 1946, 48 A. 2d 618).

§ 16–1503. Judgment and execution for possession.

When, upon a trial in a proceeding pursuant to this chapter, it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; and if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–737 (Mar. 3, 1901, ch. 854, § 22, 31 Stat. 1193).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attorney's fee 1
Intervention 2
Law governing 3
Mandatory 4

1. Attorney's fee

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. *Id.*

2. Intervention

Where landlord took a voluntary nonsuit in a summary proceeding by landlord against tenant, intervenor who, though not specifically allowed to intervene as a defendant, intervened for the purpose of contesting landlord's right to possession, was entitled as a matter of law to judgment for her costs. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

3. Law governing

Where there was a conflict between Landlord and Tenant Rule 6 and this section dealing with costs in a summary proceeding between landlord and tenant, this section would prevail. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

4. Mandatory

This section providing that if it appears that plaintiff is entitled to possession of leased premises in summary proceeding between landlord and tenant, judgment and execution for possession shall be awarded in plaintiff's favor with costs, and that if plaintiff becomes nonsuit or fails to prove his right to possession, defendant shall have judgment and execution for his costs, is mandatory. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

§ 16–1504. Certification to District Court upon plea of title—Undertaking.

When, upon a trial in a proceeding pursuant to this chapter, the defendant pleads title to the premises, in himself or in another under whom he claims, setting forth the nature of the title, under oath, and enters into an undertaking, with sufficient surety, to be approved by the court, to pay all intervening damages and costs and reasonable intervening rent for the premises, the court shall certify the proceedings to the United States District Court for the District of Columbia, and the proceeding shall be further continued in the District Court according to its rules. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–738 (Mar. 3, 1901, ch. 854, § 23, 31 Stat. 1193; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Directed verdict 1
Estoppel 2
Jurisdiction 3
Rejection of jurisdiction 4
Review 5
Special plea, necessity for 6
Undertaking 7

1. Directed verdict

Where claimant, who sought possession of commercial property, alleged that tenant held possession under expired leasehold, and tenant filed sworn answer denying claimant was entitled to possession and alleging that tenant was entitled to title and possession because of valid contract to purchase property which was entered into prior to alleged sale of premises to claimant, and tenant requested that case be certified to District Court for trial, directing verdict in claimant's favor on opening statements was improper since tenant's sworn answer was sufficient claim of title to entitle tenant to present such evidence of title so that trial court might determine whether title to real estate was necessarily involved in case. *Nickles* v. *Sullivan* (D.C. Mun. App. 1951, 83 A. 2d 283).

2. Estoppel

Where defendant in ejectment action claimed right of possession under lease from plaintiff, he was thereby estopped to deny plaintiff's title. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

3. Jurisdiction

District of Columbia Court of General Sessions lacked jurisdiction of action for possession of certain realty allegedly held without right by defendant and defendant denied that the plaintiff had any right, title, or interest in the property. *A. A. Zabarah* v. *Yemen Arab Republic* (D.C. App. 1964, 198 A. 2d 906).

The Municipal Court of the District of Columbia has no jurisdiction to try title to real property. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

4. Rejection of jurisdiction

The Municipal Court of the District of Columbia should not reject jurisdiction in cases involving title to realty unless and until it is made to appear that title to land is necessarily and directly in issue between the parties. *Nickles* v. *Sullivan* (D.C. Mun. App. 1951, 83 A. 2d 283).

Generally, the municipal court will not reject jurisdiction until it is made to appear that the title to land is necessarily and directly in issue between the parties. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

5. Review

In suit in municipal court for District of Columbia for possession of realty, where question of title was interjected by defendant by attaching to his motion for a stay a copy of his complaint in district court for specific performance of alleged contract to purchase disputed property and such interjection was in violation of plaintiff's right to have title pleaded in method prescribed by this section, stay order of Municipal Court was appealable. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

In suit in Municipal Court for District of Columbia for possession of realty, where defendant attempted to put title in issue but failed to comply with mandatory provisions of this section requiring plea under oath accompanied by an undertaking, plaintiff had right to a trial of his claim for possession, and stay of proceeding pending final disposition of defendant's suit in District Court for specific performance of alleged contract to purchase disputed property was error. *Id.*

6. Special plea, necessity for

The statute providing that title in action for possession of realty must be put in issue by plea under oath, accompanied by an undertaking, is mandatory; if defendant fails to perform any of the requirements the court is without authority to dismiss for lack of jurisdiction and must proceed to hear case on issue of possession. *S. V. Watwood* v. *W. W. Morrison et ano.* (D.C. App. 1963, 193 A. 2d 71). Defendant sued for possession of realty did not adequately plead title, where defendant failed to furnish undertaking and her plea was merely an assertion of undermined rights under contract. *Id.*

The question of title is not automatically in issue in every action for possession of real estate; it becomes an issue only when plaintiff's title is challenged by the defendant; such challenge must follow statutory requirements. *Id.*

Plea of title purportedly filed by defendant sued for possession of realty did not serve to oust court of jurisdiction under statute dealing with actions for trespass or injury to realty and not with possessory actions. *Id.*

Pendency in District Court of suit for specific performance of contract of sale of residential property did not deprive Court of General Sessions of jurisdiction in action for possession of the residential property. *Id.*

This section, prescribing procedure to be followed when title is put in issue by defendant in summary proceeding for possession of real property and requiring that the litigant must file written plea setting forth nature of title claimed, accompanied by an undertaking, is mandatory, and question of title can enter case only by special plea of defendant and if not perfected in accordance with statutory requirements, court is without authority to dismiss for lack of jurisdiction, but must proceed to hear case on issue of possession. *Sayles* v. *Eden* (D.C. Mun. App. 1958, 144 A. 2d 895).

This section providing that title in summary proceedings shall be put in issue by plea under oath, accompanied by an undertaking, is mandatory and if not complied with, no question of title can be brought into case. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

If tenant holding over after expiration of lease wished to dispute purchaser's title in suit instituted by purchaser in Municipal Court to obtain possession of dwelling for use as a residence, a special plea was required to be filed and undertaking given whereupon the case would be certified to district court. *Miller* v. *Prophet* (D.C. Mun. App. 1944, 37 A. 2d 450).

In a summary proceeding brought in municipal court, question of title can enter the case only by special plea but defendant in such a plea must comply with this section, and if no plea of title is filed the court is free to proceed and try the issue of possession. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

This section providing that title in summary proceedings be put in issue by plea under oath, accompanied by an undertaking, is mandatory, since in such action the issue to be tried is one of possession and not of title. *Id.*

Questions of title can enter the case only by special plea of the defendant and such a plea must comply with this section, and if no plea of title is filed, there is no question of title, and the court is free to proceed to try the issue of possession. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

7. Undertaking

Statute providing that if defendant pleads title to premises to which plaintiff claims right of possession, defendant must file undertaking and case must be certified to United States District Court applies only to cases wherein defendant injects question of title into case, not where plaintiff commences action requiring him as essential element of his claim of possession to prove title. *A. A. Zabarah* v. *Yemen Arab Republic* (D.C. App. 1964, 198 A. 2d 906).

Rule requiring that defendant who claims title to premises in a possessory action "accompany" his plea with an undertaking and that action then be certified to the United States District Court does not preclude Municipal Court from allowing an enlargement of 4-day period for filing such undertaking. *J. G. Sutton* v. *E. B. Jones* (D.C. Mun. App. 1962, 180 A. 2d 470).

Provisions of this section relating to certification of case involving title to realty to federal district court are mandatory, and defendant filing such a plea must comply with this section, and if plea of title is not perfected in compliance with this section, the municipal court has no alternative except to try the issue of possession. *Nickles* v. *Sullivan* (D.C. Mun. App. 1953, 97 A. 2d 920).

Municipal Court of District of Columbia did not abuse discretion in requiring $7,500 undertaking to be posted by defendant who sought certification of case involving title to realty to federal district court. *Id.*

The amount of undertaking required in order to obtain certification of case involving title to realty to federal district court is a matter within sound discretion of Municipal Court of District of Columbia, and is not subject to reversal unless abuse of discretion is shown. *Id.*

Where defendant, in action for recovery of possession of realty, put title in issue and sought certification of case to federal district court, but failed to post undertaking required by District of Columbia Code, municipal court did not err in striking plea of title and in refusing to certify case. *Id.*

§ 16–1505. Conclusiveness of judgment.

A judgment of the District of Columbia Court of General Sessions in a proceeding pursuant to this chapter is not a bar to any afteraction brought by either party, and does not conclude any question of title between them, where title is not pleaded by the defendants. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–739, 11–751a (Mar. 3, 1901, ch. 854, § 24, 31 Stat. 1193; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch 125, § 12, 41 Stat. 1312; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.,

NOTES TO DECISIONS UNDER PRIOR LAW

1. Termination of tenancy

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

Chapter 17.—GAMING TRANSACTIONS

Sec.
16–1701. Invalidity of gaming contracts.
16–1702. Recovery of losses at gaming.
16–1703. Relief from further penalty upon discovery and repayment of losses.
16–1704. Cheating at gambling.

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§ 16–1701. Invalidity of gaming contracts.

(a) A thing in action, judgment, mortgage, or other security or conveyance made and executed by a person in which any part of the consideration is for money or other valuable things won by playing at any game whatsoever, or by betting on the sides or hands of persons who play, or for the reimbursement or payment of any money knowingly lent or advanced for the purpose, or lent or advanced at the time and place of the play or bet, to a person so playing or betting or who, during the play, so plays or bets, is void except as provided by subsection (b) of this section.

(b) If the mortgage, security, or other conveyance affects real property, it shall inure to the sole benefit of, and devolve upon, the persons who might have, or be entitled to, the property, as if the person who executed the instrument had died immediately after its execution, or as if the instrument had been made to the persons so entitled after the death of the person who executed it. A grant or conveyance made for the purpose of preventing the real property from coming to, or devolving upon, the persons intended by this section to enjoy the property as herein provided is fraudulent and void.

(c) This section does not affect the validity of negotiable instruments embraced by chapters 1 to 10 of Title 28. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–701 (9 Ann, 14, § 1, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 689; Comp. Stat. D.C., p. 243, § 12).

The provisions set out in subsec. (c) are inserted for the purpose of clarification. See the case of *Wirt* v. *Stubblefield*, 17 App. D.C. 283.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Credit transactions 1
Effect of negotiable instruments law 2

1. Credit transactions

Contracts growing out of gaming transactions are declared by law to be void, but credit transactions could not be deemed gaming within the meaning of this section in absence of rule of law which says that one who sells on credit has no standing in court because he knew or should have known that the purchaser was a bad credit risk. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

2. Effect of negotiable instruments law

Insofar as this chapter may or would, if in force, affect the validity of negotiable instruments embraced by the Negotiable Instruments Law they are inconsistent with the provisions of the last-mentioned act, and are to that extent repealed and are no longer, as to negotiable instruments in force in the District of Columbia. *Wirt* v. *Stubblefield* (17 App. D.C. 283).

§ 16–1702. Recovery of losses at gaming.

A person who, at any time or sitting, by playing at cards, dice or any other game, or by betting on the sides or hands of persons who play, loses to a person so playing or betting, a sum of money, or other valuable thing, amounting to $25 or more, and pays or delivers the money or thing, or any part thereof, may, within three months after the payment or delivery, sue for and recover the money, goods or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value thereof, by a civil action, from the winner thereof, with costs.

If the person who loses the money or other thing, does not, within three months actually and bona fide, and without collusion, sue, and with effect prosecute, therefor, any person may sue for, and recover treble the value of the money, goods, chattels, and other things, with costs of suit, by a civil action against the winner, one-half to the use of the plaintiff, the remainder to the use of the District of Columbia. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–702 (9 Ann, ch. 14, § 2, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 690; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 244, § 13; R.S., D.C., § 837; Md. Act 1777, ch. 6, § 1).

The amount of "twenty-six dollars and sixty-seven cents" is rounded to the amount of $25, which is the approximate American equivalent of the British sum specified by the original statute.

The term "civil action" is substituted for "action of debt" to conform with rule 2 of the Federal Rules of Civil Procedure and of the civil rules of the Court of General Sessions; and words "in which actions or suits no more than one imparlance shall be allowed; in which actions it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won by the plaintiff's to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this section, without setting forth the special matter" are omitted as covered or superseded by, or inconsistent with, rules of pleading as set forth in rules of court. See, particularly, rules 7–9 of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions, and rule 4 of the small claims rule of Court of General Sessions.

The provision that the action may "be prosecuted in any court of record" is omitted as inconsistent with provisions governing civil jurisdiction of the District Court and the Court of General Sessions. See sections 11–521 (a) (1), 11–961, and 11–1341 herein.

Changes are made in phraseology.

§ 16–1703. Relief from further penalty upon discovery and repayment of losses.

Upon the discovery and repayment of the money or other thing to be discovered and repaid as provided by section 16–1702, the person who so discovers and repays shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, that he may have incurred by the playing for, or winning, the money or other thing so discovered and repaid. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–703 (9 Ann, ch. 14, § 4, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Comp. Stat. D.C., p. 244, § 15).

Minor changes are made in phraseology.

§ 16–1704. Cheating at gambling.

Whoever, at any one time or sitting, by fraud or false pretense, while playing any game, or while having a share in a wager played for, or while betting on the sides or hands of persons who play, wins, or acquires to himself or to any other person, above the sum or value of $25, shall, upon conviction of the offense, forfeit five times the value of the sum of money or other thing so won, and shall be deemed infamous.

The penalty prescribed by this section may be recovered in a civil action by the persons specified by, and in the manner provided by, section 16–1702. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–704 (9 Ann, ch. 14, § 5, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Md. Act 1780, ch. 23, § 3; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 245, § 16).

Surplusage is omitted, and changes are made in phraseology.

Chapter 19.—HABEAS CORPUS

Sec.
16–1901. Petition to District Court—Issuance of writ.
16–1902. Service of writ—Return.
16–1903. Suspected evasion or disobedience of writ—Procedure.
16–1904. Forfeiture and penalty for failure to produce.
16–1905. Right to copy of commitment—Forfeiture.
16–1906. Inquiry into cause of detention—Bail—Bond.
16–1907. Traversing return—Pleading—Witnesses.
16–1908. Right of other persons to writ.
16–1909. Construction of chapter.

§ 16–1901. Petition to District Court—Issuance of writ.

A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the United States District Court for the District of Columbia, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is, returnable forthwith before the court or judge. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–801 (Mar. 3, 1901, ch. 854, § 1143, 31 Stat. 1372; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32 (a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

Cross Reference

Special proceedings for commitment or discharge of feeble-minded person do not abridge right to petition for writ of habeas corpus, see § 32–618.

NOTES TO DECISIONS UNDER PRIOR LAW

Aliens 1
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1. Aliens

Immigration officers have jurisdiction to exclude an alien who is not entitled under some statute or treaty to come into the United States, yet if the alien is entitled, of right, by some law or treaty, to enter this country, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restraining the alien of his liberty, presents a judicial question for the decision of which the

courts may intervene upon a writ of habeas corpus. *Lem Moon Sing* v. *United States* (1895, 15 S. Ct. 967, 158 U.S. 538, 39 L. Ed. 1082).

A petition for habeas corpus ought not to be entertained unless the court is satisfied that the petitioner can make out at least a prima facie case. *United States* v. *Sing Tuck* (1904, 24 S. Ct. 621, 194 U.S. 161, 48 L. Ed. 917).

Habeas corpus will lie to test the legal authority of the Secretary of Labor to deport alien contract laborers and to revoke the permit of entry. *Bata Shoe Co.* v. *Perkins* (1940, 33 F. Supp. 508).

2. Allegations of petition

Habeas corpus petition alleging unlawful confinement of petitioner because he was incompetently represented by counsel who advised him to plead guilty due to arrangement for a light sentence, but not alleging that petitioner misunderstood the nature of the charges or that he did not knowingly plead guilty or was coerced by judge or prosecutor to enter the plea, was properly dismissed. *Thomson* v. *Huff* (1945, 149 F. 2d 842, 80 U.S. App. D.C. 165).

If prior application for writ of habeas corpus has been made, in same case, by petitioner or in his behalf, petition should so state and such other facts and documents should be set out as will allow judge properly to determine whether issues presented by present petition were decided in former proceeding. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Mere general assertions of incompetency or disinterest on part of counsel do not constitute prima facie showing required by this section to support a petition for writ of habeas corpus. *Id.*

Petition for writ of habeas corpus should state by what authority respondent purports to detain petitioner, and, if that authority is a warrant of commitment, a copy of it, together with the transcript of record, or its essential parts, in proceeding which resulted in the commitment should be attached to or set out in the petition. *Id.*

Mere mistakes of counsel cannot be reviewed on a petition for habeas corpus and, to justify a writ on allegations regarding incompetency of attorney, an extreme case must be disclosed. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254). See, also, *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42); *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

Petition for writ of habeas corpus alleging that, prior to trial in criminal prosecution, petitioner was brought from Virginia to the District of Columbia without extradition proceedings in spite of his protest and his unwillingness to waive extradition, presented no substantial question, and denial of petition without appointment of counsel for defendant was not error. *Sheehan* v. *Huff* (1944, 142 F. 2d 81, 78 App. D.C. 391, certiorari denied 64 S. Ct. 1287, 322 U.S. 764, 88 L. Ed. 1591).

3. Amendment of petition

If petition for writ of habeas corpus is insufficient in substance, the judge to whom it is presented may, in interest of justice, permit or require its amendment, especially where petition is product of petitioner's own inexpert draftsmanship. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

4. Appointment of counsel

Court passing on sufficiency of petition for writ of habeas corpus is not required to appoint an attorney for petitioner and no deprivation of constitutional rights results from failure to do so. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

A prisoner may not obtain a writ of habeas corpus on sole ground that counsel, properly appointed by court to defend him, acted incompetently or negligently during the criminal proceeding. *Diggs* v. *Welch* (1945, 148 F. 2d 667, 80 U.S. App. D.C. 5, certiorari denied 65 S. Ct. 1576, 325 U.S. 889, 89 L. Ed. 2002).

Where petition for a writ of habeas corpus charged, in effect, that attorney appointed by court to represent petitioner in a criminal case gave petitioner such bad advice through negligence or ignorance in connection with entering his plea that he could not be said to have been represented by competent counsel, but there was no allegation that court did not select counsel with care, and with due regard for petitioner's constitutional rights, appellate court was required to presume that court appointed a reputable member of bar in whom it had confidence. *Id.*

Where petition for writ of habeas corpus stated a cause of action entitling petitioner to discharge from custody if allegations thereof were true and petitioner made affidavit stating that he was a poor person unable to pay costs, petitioner was entitled to appointment of competent counsel under the forma pauperis statute, 28 U.S.C. §§ 832 to 836. *Ex parte Rosier* (1943, 133 F. 2d 316, 76 U.S. App. D.C. 214).

Where a petition for writ of habeas corpus has been presented, legally sufficient on its face to start the court's machinery in motion, the judge should appoint either a guardian or counsel to represent the petitioner in the further stages of the proceeding. *Overholser* v. *Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

5. Coercion or restraint

Alleged fact that petitioner had been seized and deprived of his liberty by police force and had been lodged in a cell and held in custody incommunicado and brutally beaten for purpose of having petitioner make confession of guilt, was not sufficient to justify issuance of writ of habeas corpus, where no confession had been received or offered in evidence in criminal trial and petitioner was under no coercion when he appeared in court at criminal trial. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

6. Consideration of petition

A petition for writ of habeas corpus must be carefully considered by judge regardless of source of the petition, and the petition should not be scrutinized with technical nicety nor duty of consideration discharged as a mere matter of routine. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

7. Construction

This section must be so interpreted as to preserve, in full vigor, the writ of habeas corpus, but it is necessary to give full meaning to all the language of the section and thus protect the writ from abuse. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

8. Duty of court

Where prisoner filed letter as petition for writ of habeas corpus, action of court in designating competent counsel to take such steps as might seem advisable in protection of rights of prisoner was proper and fully within court's discretion, but views of counsel could not be a substitute for duty of court to determine its action in respect to the writ from petition itself and return and traverses filed thereto. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254).

9. Federal prisoner

A court in the District of Columbia does not have jurisdiction to issue a writ of habeas corpus against Attorney General of the United States or his representative on petition of a federal prisoner confined outside the District, although Attorney General designates place of confinement of person convicted of an offense against the United States. *Sanders* v. *Bennett* (1945, 148 F. 2d 19, 80 U.S. App. D.C. 32).

10. Insanity cases

Habeas corpus is available to inmate of hospital for insane, not for purpose of determining inmate's mental condition, but as a method of initiating an appropriate procedure for determination of the inmate's mental condition. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

"Habeas corpus" is a proper remedy to challenge the continued confinement in mental hospital of persons who

claim to be restored to mental health. *De Marcos* v. *Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

11. Issuance by court of appeals

Application for habeas corpus to the various District Judges within District must first be shown before justice of federal appellate court will entertain application for writ of habeas corpus. *In re Gersing* (1945, 145 F. 2d 481, 79 U.S. App. D.C. 245).

The United States Court of Appeals for the District of Columbia cannot entertain an original petition for writ of habeas corpus, since no statute confers such jurisdiction upon the court. *In re Greene* (1944, 140 F. 2d 175, 78 U.S. App. D.C. 320).

Appropriate procedure to procure writ of habeas corpus in District of Columbia should have been to address petition to District Court or one of the twelve judges thereof, and petition addressed to one of the justices of the United States Court of Appeals would be denied. *In re Holzworth* (1935, 74 F. Supp. 388).

12. Issuance of writ, generally

When a petition for writ of habeas corpus is presented to a judge with a request for leave to file it, the judge may, if petitioner is not entitled to a writ, deny leave to file it. *Young* v. *Gill* (1945, 149 F. 2d 843, 80 U.S. App. D.C. 166).

Alleged inconsistencies in the proof and insufficiency of evidence on which to sustain conviction were matters reviewable only on appeal and would not support issuance of writ of habeas corpus. *Id.*

After a petition for writ of habeas corpus has been filed, if it satisfies statutory requirements, the judge should issue the writ forthwith. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

13. Jurisdiction

A federal district court is without jurisdiction to issue a writ of habeas corpus if the person detained is not within the territorial jurisdiction of the court when the petition is filed. *Ahrens et al.* v. *Clark* (1948, 68 S. Ct. 188, 335 U.S. 188, 92 L. Ed. 1898).

The jurisdiction requirement that the person for whose relief a petition for a writ of habeas corpus is intended must be within the territorial jurisdiction of the district court is one which Congress has imposed on the power of the district court to act, and it may not be waived by the parties. *Id.*

Petition for habeas corpus by prisoner confined in District of Columbia Reformatory at Lorton, Va., was not within territorial jurisdiction of District Court for District of Columbia. *McAffee* v. *Clemmer* (1948, 171 F. 2d 131, 84 U.S. App. D.C. 57).

Courts in the District of Columbia may issue writs of habeas corpus directed to those in direct charge of penal institutions of the District which happen to be located just outside its borders, since it is the duty of the District to adjudicate matters arising out of the conduct of its own institutions. *Sanders* v. *Bennett* (1945, 148 F. 2d 19, 80 U.S. App. D.C. 32).

Petition for writ of habeas corpus can challenge jurisdiction of court which committed petitioner by showing either that court had no jurisdiction to try petitioner or that during its proceeding his constitutional rights were so far denied that the court lost jurisdiction. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Petition for writ of habeas corpus should establish jurisdiction of court by showing place of petitioner's confinement, that it is within territorial jurisdiction of court, name, and address of person in whose custody petitioner is restrained, and any other jurisdictional facts which nature of case may require. *Id.*

District Court has jurisdiction of habeas corpus proceedings filed by inmates of the District of Columbia Reformatory at Lorton, Virginia, despite the fact that the institution is not within the District. *Burns* v. *Welch* (1947, 159 F. 2d 29, 81 U.S. App. D.C. 384).

District court was without jurisdiction to entertain petition for writ of habeas corpus attacking petitioner's original conviction, where petitioner was held in jurisdiction solely by reason of writ of habeas corpus ad prosequendum. *Pelly* v. *Mathews U.S. Marshal* (1947, 163 F. 2d 700, 82 U.S. App. D.C. 264, certiorari denied 68 S. Ct. 113, 392 U.S. 811, 92 L. Ed. 388, rehearing denied 68 S. Ct. 207, 332 U.S. 832, 92 L. Ed. 406).

United States District Court for District of Columbia has authority to entertain petitions for habeas corpus on behalf of persons confined in the District workhouse at Occoquan, Virginia, or in the District of Columbia Reformatory at Lorton, Virginia, though located outside the District. *Ex parte Flick* (1948, 76 F. Supp. 979, affirmed 174 F. 2d 983, 85 U.S. App. D.C. 70, certiorari denied 70 S. Ct. 158, 338 U.S. 879, 94 L. Ed. 539, rehearing denied 70 S. Ct. 343, 338 U.S. 940, 94 L. Ed. 579).

United States District Court for District of Columbia is without jurisdiction to issue habeas corpus to test legality of imprisonment of a person incarcerated in the American Occupation Zone of Germany by judgment of a United States Military Tribunal, though there might be no other tribunal in which relief could be had. *Id.*

14. Justices may issue

The justices of the United States Court for the District of Columbia have power to issue writ of habeas corpus ad prosequendum. *Downey* v. *United States* (1937, 91 F. 2d 223, 67 App. D.C. 192).

15. Nature of writ

The writ of habeas corpus in respect of lunacy is one of relief rather than of original adjudication. *Barry* v. *Hall* (1938, 98 F. 2d 222, 68 App. D.C. 350).

"Habeas corpus" can be sought only to effectuate a prisoner's immediate release, and not to test the legality of imprisonment at some future time. *Pope* v. *Huff* (1941, 117 F. 2d 779, 73 App. D.C. 170, certiorari denied 62 S. Ct. 134, 314 U.S. 669, 86 L. Ed. 535, rehearing denied 62 S. Ct. 299, 314 U.S. 713, 86 L. Ed. 568, rehearing denied 62 S. Ct. 358, 314 U.S. 714, 86 L. Ed. 569).

Habeas corpus proceeding is not a "criminal proceeding" within provisions of U.S. Const. Amend. Six for assistance of counsel. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

The use of writ of habeas corpus extends to those exceptional cases where conviction has been in disregard of constitutional rights of accused and where writ is only effective means of preserving his rights. *Jones* v. *Huff* (1945, 152 F. 2d 14, 80 U.S. App. D.C. 254).

16. Parole eligibility

Eligibility to parole cannot be tried in habeas corpus. *Jones* v. *Welch* (1945, 151 F. 2d 769, 80 U.S. App. D.C. 253).

Where allegations of petition for habeas corpus related to manner in which parole board arrived at its decision not to admit petitioner to parole, the petition was properly denied. *Id.*

17. Procedure on application

It is the usual procedure on an application for a writ of habeas corpus in a Federal court for the court to issue the writ and on the return, to hear and dispose of the case but it may without issuing the writ consider and determine whether the facts alleged by the petition, if proved, would warrant discharge of the prisoner. *Ex parte Quirin* (1942, 63 S. Ct. 2, 317 U.S. 1, 87 L. Ed. 3).

Where petition for writ of habeas corpus stated a cause of action entitling petitioner to discharge from custody if allegations were true, failure to accord petitioner a hearing in respect of the merits of his petition was error. *Ex parte Rosier* (1943, 133 F. 2d 316, 76 U.S. App. D.C. 214).

18. Representation by counsel

The mere fact that an accused was not represented by counsel is not in itself a sufficient basis for granting a writ of habeas corpus. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

19. Rule to show cause

If, upon consideration of a petition which has been filed, it appears that petitioner is not entitled to writ of habeas corpus, the court should refuse to issue it, but, if allegations of petition are inconclusive, the judge may issue rule to show cause why writ should not be granted.

Dorsey v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where rule to show cause why writ of habeas corpus should not be granted has been issued and judge finds from facts exhibited by opposing party that no issue of fact or law is involved, the judge may refuse to grant the writ, in which event it is not necessary to hold a hearing. *Id.*

20. Service

The proper person to be served in ordinary habeas corpus proceeding by a federal prisoner confined outside the District of Columbia is warden of penitentiary in which prisoner is confined, rather than an official in District of Columbia who supervises the warden. *Sanders* v. *Bennett* (1945, 148 F. 2d 19, 80 U.S. App. D.C. 32).

21. Subsequent petitions

Where judge to whom is presented a petition for writ of habeas corpus, together with a request for leave to file, ascertains that petitioner has on a previous petition had a full hearing on same identical allegations, leave to file second petition should be denied. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where comparison of present habeas corpus petition with prior petition disclosed that all matters sought to be raised on the second petition with one exception were raised on the prior petition district court would not grant the writ raising the same points tried out in the prior proceeding where there were no extraordinary circumstanaces. *Jordon* v. *Clemmer* (1948, 80 F. Supp. 539).

22. Sufficiency of petition

Petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammer* v. *Huff* (1940, 110 F. 2d 113, 71 App. D.C. 246).

A petition alleging that petitioner was restrained of his liberty, describing the person detaining him and the place of the detention, and asserting illegality of the restraint by alleging that the petitioner was at the time of the filing of the petition of sound mind and that his original criminal sentence had expired, stated a cause of action for discharge or issuance of a rule to show cause. *Ex parte Rosier* (1943, 133 F. 2d 316, 76 U.S. App. D.C. 214).

A petitioner seeking a writ of habeas corpus must make a prima facie case. that is, his petition must show he is entitled to the writ. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Judgment under which petitioner seeking writ of habeas corpus is detained in penal institution is impervious to collateral attack unless his petition sufficiently challenges the jurisdiction of the court which committed him. *Id.*

Petition for writ of habeas corpus on ground that conviction had been obtained by use of improper evidence and that petitioner had been deprived of effective assistance of counsel was properly denied without hearing, where there was no transcript of proceedings in the criminal trial and petition did not disclose exceptional circumstances. *Strong* v. *Huff* (1945, 148 F. 2d 692, 80 U.S. App. D.C. 89, followed in 149 F. 2d 30, 80 U.S. App. D.C. 411, certiorari denied 66 St. Ct. 165, 326 U.S. 768, 90 L. Ed. 463).

Petition for writ of habeas corpus charging, in effect, that attorney appointed by court to represent petitioner in criminal prosecution gave him such bad advice through negligence or ignorance in connection with entering his plea that petitioner did not have effective or competent representation by counsel, was insufficient to require a hearing. *Diggs* v. *Welch* (1945, 148 F. 2d 667, 80 U.S. App. D.C. 5, certiorari denied 65 S. Ct. 1576, 325 U.S. 889, 89 L. Ed. 2002).

Petition for writ of habeas corpus, alleging in substance that attorney representing defendant, at trial on charge of forgery, failed to object to admission in evidence of an involuntary confession, failed to call witnesses who would have established innocence of defendant, failed to offer defense although defendant was innocent, and failed to take such steps as would have permitted jury to see a sample of defendant's handwriting after a request for such evidnce had been made by a juror, was sufficient and denial of petition without hearing was improper. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254).

23. Time for application

Before trial in District Court where indictment is pending, accused may not test, by means of habeas corpus proceeding, validity of statute which he is charged with having violated. *Pelley* v. *Botkin* (1946, 152 F. 2d 12, 80 U.S. App. D.C. 251).

Where application for writ of habeas corpus showed that petitioner was held in custody to await trial under an indictment which accused him of violating U.S. Code, title 18, §§ 9 to 13 and that petitioner sought to be released solely because of alleged unconstitutionality of said sections, the application was premature. *Id.*

24. Waiver of counsel

Where court granted four successive continuances at request of accused, and thereafter accused reported his attempts made to employ certain counsel, declined the court's offer to appoint counsel, did not request another continuance, and said he preferred to represent himself, which he proceeded to do competently, accused waived right to counsel and allegation in support of petition for writ of habeas corpus that he was denied right to have assistance of counsel was frivolous. *Koehne* v. *Matthews* (1948, 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

25. Writ as an appeal

The writ of habeas corpus cannot be used for purpose of an appeal, or to retry issues, whether of law or of fact. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

The writ of habeas corpus is not intended to serve the purposes of an appeal. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289). See, also, *Fowler* v. *Gill* (1946, 156 F. 2d 565, 81 U.S. App. D.C. 167, certiorari denied 67 S. Ct. 352, 329 U.S. 791, 91 L. Ed. 677, rehearing denied 67 S. Ct. 488, 329 U.S. 832, 91 L. Ed. 705).

Petition for writ of habeas corpus may not be used as a substitute for an appeal or writ of error. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

§ 16–1902. Service of writ—Return.

A writ of habeas corpus issued pursuant to this chapter shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained. The officer or other person shall forthwith, or within such reasonable time as the court or judge directs:

(1) make return of the writ and cause the person detained to be brought before the court or judge, according to the command of the writ; and

(2) certify the true cause of his detainer or imprisonment, if any, and under what color or pretense he is confined or restrained of his liberty.

(Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–802 (Mar. 3, 1901, ch. 854, § 1144, 31 Stat. 1372; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction 1
Privileged communications 2

1. Jurisdiction

Service on the commissioners of the District, the Director of Public Welfare, and the Superintendent of Penal

Institutions, was sufficient to give the District Court jurisdiction to issue habeas corpus in District of Columbia workhouse located outside of the District. *Sanders* v. *Allen* (1939, 100 F. 2d 717, 69 App. D.C. 307).

Although District Court had jurisdiction of habeas corpus proceeding filed by inmate of the District Reformatory at Lorton, Virginia, the court had no jurisdiction to issue writ directed to the Superintendent of the Reformatory who had neither home nor office in the District but resided at Lorton. *Burns* v. *Welch* (1947, 159 F. 2d 29, 81 U.S. App. D.C. 384).

2. Privileged communications

Statements made by superintendent of hospital, in response to writ of habeas corpus, that petitioner was insane and dangerous, were entitled to immunity of absolute privilege, and could not be made basis of a libel complaint. *Cassel* v. *Overholser* (1948, 169 F. 2d 683, 83 U.S. App. D.C. 350, certiorari denied 69 S. Ct. 741, 336 U.S. 939, 93 L. Ed. 1097).

§ 16–1903. Suspected evasion or disobedience of writ—Procedure.

On an application for a writ of habeas corpus, if probable cause is shown for believing that the person charged with confining or detaining the person applying therefor, or on whose behalf the application is made:

(1) is about to remove the person so detained from the place where he is then detained, for the purpose of evading a writ of habeas corpus, or for other purposes; or

(2) he would evade or not obey a writ of habeas corpus—

the court or judge shall insert in the writ a clause commanding the United States marshal to serve the writ on the person to whom it is directed and cause him immediately to appear before the court or judge, together with the person so confined or detained. Thereupon, the marshal shall immediately carry those persons before the court or judge, and the court or judge shall proceed to inquire into the matter. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–803 (Mar. 3, 1901, ch. 854, § 1145, 31 Stat. 1372; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

§ 16–1904. Forfeiture and penalty for failure to produce.

If an officer or other person to whom a writ of habeas corpus is directed neglects or refuses to:

(1) make return of the writ; or

(2) bring the body of the person detained—

according to the command of the writ, he shall forfeit to the person detained the sum of $500, and be liable to attachment and punishment as for a contempt. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–804 (Mar. 3, 1901, ch. 854, § 1146, 31 Stat. 1372).

Changes are made in phraseology.

§ 16–1905. Right to copy of commitment—Forfeiture.

A person committed or detained, or a person in his behalf, may demand a true copy of the warrant of commitment or detainer. An officer or other person detaining a person, who refuses or neglects to deliver to him or to a person in his behalf a true copy of the warrant of commitment or detainer, if one exists, within six hours after the demand, shall forfeit to the party so detained the sum of $500. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–805 (Mar. 3, 1901, ch. 854, § 1147, 31 Stat. 1372).

Changes are made in phraseology.

§ 16–1906. Inquiry into cause of detention—Bail—Bond.

On the return of a writ of habeas corpus issued pursuant to this chapter and the production of the person detained, the court or judge shall immediately inquire into the legality and propriety of the confinement or detention. If it appears that the person is detained without legal warrant or authority, the court or judge shall immediately release or discharge him. If the court or judge deems his detention to be lawful and proper, the court or judge shall remand him to the same custody, or, in a proper case, admit him to bail, if he is confined on a charge of having committed a bailable criminal offense. If he is bailed, the court or judge shall require a sufficient bond or recognizance to answer in the proper court, and transmit it to that court (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–806 (Mar. 3, 1901, ch. 854, § 1148, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Admissibility of evidence

Official hospital records concerning a shooting in a Maine hospital were properly received in evidence in habeas corpus proceeding where issue was whether petitioner was sane or insane. *Williams* v. *Overholser* (1945, 151 F. 2d 457, 80 U.S. App. D.C. 235, certiorari denied 66 S. Ct. 957, 327 U.S. 808, 90 L. Ed. 1032).

2. Examination in mental cases

Where petitioner seeks writ of habeas corpus to obtain release from confinement in mental hospital on ground that his mental health is restored, and petitioner demands an examination by independent experts, or in a doubtful case, even in absence of such a demand, it is the right of court to seek assistance of Commission on Mental Health in determining sanity of petitioner. *De Marcos* v. *Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

In habeas corpus proceeding where petitioner sought release from confinement on ground that his mental health was restored, and requested that court provide expert witnesses in petitioner's behalf, not members of Commission on Mental Health, court denying request should have offered petitioner an examination by the

Commission, but defect was cured by petitioner's insistence in appellate court that such relief if offered would be refused. *Id.*

Section 21-308 establishing the Commission of Mental Health vests a discretion in court to require the Commission's expert assistance in a habeas corpus proceeding in which by reason of his poverty petitioner is unable to secure the testimony of other professional witnesses. *Id.*

In habeas corpus proceeding by petitioner who has been duly committed to hospital for insane, the issue which must ultimately be decided is whether petitioner has sufficiently recovered from mental disease so that he may safely be released, and if despite judgment of hospital staff that petitioner has not recovered, there is substantial doubt on the question, it becomes duty of court to see that a new judgment on petitioner's sanity is made according to statutory procedure. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 63 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

If proceeding to determine mental condition of a civilian committed to hospital for insane was originally commenced but was not properly carried out and if judge, to whom petition for writ of habeas corpus is presented, is satisfied that, as a consequence, the petitioner was improperly committed, the judge should order that proceedings be reopened and a proper determination made of the petitioner's present mental condition. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

The frequency with which reexamination regarding present mental condition of a person committed to hospital for insane should be required must depend, in each case, upon the petition presented, the type of insanity for which petitioner was originally committed, time elapsed since last inquiry, and other considerations on record, of which judge is required to take judicial notice. *Id.*

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the only question before court was whether record raised sufficient doubt as to petitioner's insanity at present time to justify reopening commitment proceeding. *Ex parte De Marcos* (1946, 65 F. Supp. 231).

3. Expert testimony

An inmate of hospital for insane, petitioning for writ of habeas corpus, may demand the expert testimony of members of the Commission on Mental Health, or court of its own motion may require such testimony. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

4. Insane persons

In habeas corpus proceeding, it is not function of judge to determine mental condition of a person who has been committed for insanity, but purpose of such proceeding is rather to determine whether substantial doubt of insanity exists which requires an order reopening proceeding under which petitioner was originally committed to hospital. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

If original commitment to hospital for insane was made under U.S. Code, title 24, § 191, which authorizes detention of insane persons in military service on order of military authority, and the judge, to whom petition for writ of habeas corpus is presented, is satisfied that a sufficient showing of present sanity is made, the judge should order that petitioner be released unless, within a reasonable time specified, the proper military authority orders his recommitment. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where there was evidence in habeas corpus proceeding that petitioner, who had been convicted of manslaughter in Canada and sentenced to life imprisonment prior to his removal to United States, continued to be a person of unsound mind and was not a proper person to be at large, he should be committed to custody of superintendent of hospital of which he had been an inmate pending disposition of appeal from order discharging him, or further order of court *Overholser* v. *De Marcos* (1945, 147 F. 2d 145, 79 U.S. App. D.C. 397).

5. Involuntary confessions

The question whether an involuntary confession was received in evidence in criminal prosecution could not be retried by habeas corpus. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289).

6. Judicial notice

In ruling on petition for writ of habeas corpus, court could take judicial notice of its record showing a denial of a prior petition for habeas corpus. *Rookard* v. *Huff* (1945, 145 F. 2d 708, 79 U.S. App. D.C. 291).

In habeas corpus proceeding by bankrupts who had been committed to jail for failure to comply with order directing them to turn over certain assets to bankruptcy trustee, justice of federal appellate court could take judicial notice of fact that on former appeals of the bankrupts it was clearly made to appear that bankrupts had been guilty of gross fraud upon bankruptcy court. *In re Gersing* (1944, 145 F. 2d 481, 79 U.S. App. D.C. 245).

7. Jurisdiction of military commission

Charge that enemies with purpose of destroying war materials and utilities entered or after entry remained in United States territory without uniform alleged an offense which the President was authorized to order tried by military commission and the President's order convening the commission and laying down the procedure to be followed on trial before the commission and for review of its findings and sentence and the procedure followed by the commission were lawful so that the accused were not entitled to discharge on habeas corpus. *Ex parte Quirin* (1942, 63 S. Ct. 2, 317 U.S. 1, 87 L. Ed. 3).

Writs of habeas corpus were properly denied petitioners held in custody for trial before military commission appointed by the President, on grounds that the President was authorized to order trial before commission, that commission was lawfully constituted and that petitioners were held in lawful custody. *Id.*

8. Moot questions

Where husband had been improperly imprisoned for contempt for noncompliance with order awarding maintenance pendente lite and suit money, in wife's suit for maintenance, the fact that he had been released from custody on giving bond for satisfaction of contempt judgment did not require dismissal of appeal from order denying writ of habeas corpus as "moot", since husband was in custody of law and was restrained of his liberty. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

9. New evidence

Contention on habeas corpus petition that the murder for which petitioner was convicted did not take place as alleged could not be raised by writ of habeas corpus but only on a motion for new trial on the ground of newly discovered evidence. *Jordon* v. *Clemmer* (1948, 80 F. Supp. 539).

10. Presumptions

Presumption existed that staff of hospital for insane was competent and that its opinion regarding sanity of an inmate, based on observation and treatment, was correct. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

In determining whether evidence in habeas corpus proceeding by petitioner who had been duly committed to hospital for insane raised doubt regarding validity of judgment of hospital staff sufficient to require reopening of commitment proceeding, presumption that persons legally committed to hospital for insane are insane was to be considered. *Id.*

The presumption in favor of regularity of judicial proceeding must be fully indulged in habeas corpus proceeding. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254).

11. Purpose

A hearing on habeas corpus is not intended as a substitute for functions of a trial court. *Pelley* v. *Botkin* (1946, 152 F. 2d 12, 80 U.S. App. D.C. 251).

12. Release of petitioner

In habeas corpus proceeding, judgment should not order unconditional release of a person committed for insanity. *Overholser* v. *De Marcos* (1945, 149 F. 2d, 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

A person held in hospital for insane because of insanity should not be ordered released, unconditionally, in a habeas corpus proceeding. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

If a civilian is committed to hospital for insane without a judicial determination of his mental condition, the judge in habeas corpus proceeding, should order that the petitioner be released unless, within a reasonable time specified, a proper proceeding shall have been commenced to secure such a judicial determination. *Id.*

A parole violator, who was returned to prison without permitting counsel who had previously represented prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. *Fleming* v. *Tate* (1946, 156 F. 2d 843, 81 U.S. App. D.C. 205).

13. Remand

Where petition for habeas corpus was inexpertly drawn by unschooled petitioner but petition did allege as defects in proceedings leading to imprisonment that petitioner was denied assistance of counsel at preliminary hearing and arraignment, that he was innocent of alleged crime, that his prior prison record was called to jury's attention and that his counsel failed to take promised appeal, order dismissing petition would be reversed and case remanded for amendment of petition and hearing on the merits. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

14. Res judicata

The rule of res judicata does not apply in habeas corpus proceedings but the trial judge to whom petition is presented may examine the record in making his determination whether its allegations are sufficient, and he may do so even without issuing a rule to show cause. *Rookard* v. *Huff* (1945, 145 F. 2d 708, 79 U.S. App. D.C. 291).

Where contention that jurors in second criminal trial were not impartial was made and supported by evidence in second habeas corpus proceeding which was dismissed and third petition for writ of habeas corpus showed that new evidence was in petitioner's possession when he filed second petition, and no reason was offered for not presenting the proof in second proceeding, controlling weight was properly given to the prior adjudication, and third petition was properly dismissed. *Pope* v. *Huff* (1944, 141 F. 2d 727, 79 U.S. App. D.C. 18).

The doctrine of res judicata does not apply to habeas corpus proceedings, but the fact that same issues have been decided in a former proceeding may, as a matter of judicial discretion, be given controlling weight. *Pope* v. *Huff* (1944, 141 F. 2d 727, 79 U.S. App. D.C. 18). See, also, *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where District Court had jurisdiction in first instance to try petitioner and, before trial, had denied a motion to suppress evidence, the admission of the evidence was not such a denial of constitutional rights as to cause district court to lose jurisdiction, and writ of habeas corpus sought on theory that court had lost jurisdiction was properly denied. *Fowler* v. *Gill* (1946, 156 F. 2d 565, 81 U.S. App. D.C. 167, certiorari denied 67 S. Ct. 352, 329 U.S. 791, 91 L. Ed. 677, rehearing denied, 67 S. Ct. 488, 329 U.S. 832, 91 L. Ed. 705).

A determination in habeas corpus proceeding is not strictly res judicata but the court will not grant a second writ raising the same point that was thoroughly tried out and determined in the prior proceeding, except under extraordinary circumstances. *Jordon* v. *Clemmer* (1948, 80 F. Supp. 539).

15. Review

Presentation for judicial review of petition for writ of habeas corpus is the "institution of a suit" so that the denial by federal district court of leave to file the petition was a "judicial determination" reviewable on appeal to the United States Court of Appeals for the District of Columbia and reviewable in the Supreme Court by certiorari. *Ex parte Quirin* (1942, 63 S. Ct. 2, 317 U.S. 1, 87 L. Ed. 3).

On application for leave to file petition for habeas corpus to determine authority of the President to order accused charged with violating the law of war tried by military tribunal and on petition for certiorari to review orders of district court denying application for leave to file petition for habeas corpus, the Supreme Court was not concerned with any question of guilt or innocence of the petitioners. *Id.*

Where first specification of charge against accused set forth violation of the law of war triable by military commission on application for leave to file petitions for habeas corpus and for certiorari to review orders of district court denying applications for such leave, the Supreme Court would not consider whether other charges were sufficient. *Id.*

Allegedly erroneous rulings on questions of evidence could be considered only on an appeal from the criminal sentence itself and could not be availed of in a habeas corpus proceeding, since the "writ of habeas corpus" is not a substitute for such an appeal. *Curtis* v. *Rives* (1942, 123 F. 2d 936, 75 U.S. App. D.C. 66).

Where charges that accused was not adequately represented in criminal trial and that he was denied the right of the assistance of counsel in perfecting appeal from judgment of conviction were not within the issues in habeas corpus hearing, and there was no finding of fact in respect of either of them, the reviewing court could not consider those charges on appeal from final order entered in habeas corpus proceeding. *Id.*

Where evidence was conflicting as to whether person seeking discharge on writ of habeas corpus was insane, conclusions of trial court which discharged the writ on ground that petitioner was still insane could not be disturbed on appeal. *Williams* v. *Overholser* (1945, 151 F. 2d 457, 80 U.S. App. D.C. 235, certiorari denied 66 S. Ct. 957, 327 U.S. 808, 90 L. Ed. 1032).

16. Right to jury trial

In habeas corpus for release from an insane asylum petitioner is not entitled to jury trial, although the court may call a jury to render an advisory verdict. *Barry* v. *White* (1933, 64 F. 2d 707, 62 App. D.C. 69).

The right to a jury trial does not exist on the issue of insanity in a habeas corpus proceeding. *De Marcos* v. *Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the record raised sufficient doubt as to petitioner's insanity at present time to require a reexamination of his mental condition by the Commission on Mental Health in accordance with § 21–308 et seq. under which he was committed. *Ex parte De Marcos* (1946, 65 F. Supp. 231).

17. Scope of review

The scope of review on habeas corpus is limited to examination of the jurisdiction of the court whose judgment of conviction is challenged and does not include the consideration of guilt or innocence of the petitioner. *Evans* v. *Rives* (1942, 126 F. 2d 633, 75 U.S. App. D.C. 242).

A judgment of conviction in criminal case cannot be attacked in habeas corpus proceeding except on jurisdictional grounds. *Blount* v. *Huff* (1944, 144 F. 2d 21, 79 U.S. App. D.C. 204, certiorari denied 65 S. Ct. 276, 323 U.S. 789, 89 L. Ed. 628).

Facts of record with regard to what occurred at a trial cannot be attacked on habeas corpus. *Williams* v. *Huff* (1944, 142 F. 2d 91, 79 U.S. App. D.C. 31).

Even if postponement of sentence under first conviction until after second conviction vitiated sentence imposed under first conviction, eligibility to parole, which might be affected, could not be tried in habeas corpus. *Pope* v. *Huff* (1944, 141 F. 2d 727, 79 U.S. App. D.C. 18).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane, the only question before court was whether evidence raised a doubt regarding validity of judgment of hospital staff sufficient to require reopening of commitment proceeding. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

Where writ of habeas corpus is sought on ground that court which committed petitioner lost jurisdiction because of denial of petitioner's constitutional rights, the writ may be used not only to search record, but to inquire into facts regardless of whether they appear on record, thus giving to person in custody a judicial inquiry into truth and essence of the causes of his detention. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where petitioner had been brought to the District of Columbia from a federal penitentiary outside the District on a writ of habeas corpus ad prosequendum, petitioner could not in habeas corpus proceeding to obtain his release under the prior writ have the court examine alleged errors in the prior trial which resulted in his confinement in penitentiary. *Noble* v. *Botkin* (1946, 153 F. 2d 228, 80 U.S. App. D.C. 354).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate* (1946, 63 F. Supp. 961).

When directed to an inquiry into cause of imprisonment in judicial proceedings, scope of review on habeas corpus extends only to questions affecting jurisdiction of the court and sufficiency in point of law of the proceedings. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 93 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 US. 880, 94 L. Ed. 540).

The guilt or innocence of the petitioner is a matter that cannot be reviewed in a habeas corpus proceeding which is limited to questions of jurisdiction and questions of constitutional rights. *Jordon* v. *Clemmer* (1948, 80 F. Supp. 539).

18. Sufficiency of evidence

Sufficiency of evidence to support a conviction is not jurisdictional and is not open to review in habeas corpus proceeding. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289).

Evidence was insufficient to sustain order in habeas corpus proceeding discharging petitioner from custody of hospital for insane on ground that petitioner was sane. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

In habeas corpus proceeding by inmate of hospital for insane, that inmate's conduct in hospital was orderly, was not, standing alone, evidence that inmate should be released. *Id.*

Evidence was insufficient to sustain finding in habeas corpus proceeding that seventeen-year-old boy intelligently waived his constitutional right to counsel in criminal case. *Williams* v. *Huff* (1945, 146 F. 2d 867, 79 U.S. App. D.C. 326).

In habeas corpus proceeding, record sustained determination that petitioner continued to be of unsound mind and justified judgment recommitting her to custody of authorities at hospital. *Anders* v. *Overholser* (1948, 168 F. 2d 151, 83 U.S. App. D.C. 394).

19. Trial procedure

Where petitioner founded his habeas corpus petition on U.S. Const. Amend. 6, charging that he was not confronted with witnesses against him, in that police deliberately withheld certain persons from testifying, but it appeared that petitioner was present at trial when government witnesses were called and that his counsel cross-examined those witnesses, petitioner's real charge was not denial of the right of confrontation as such, but suppression or concealment of evidence or favorable witnesses, which the reviewing court could assume would have been a denial of "due process of law" in violation of U.S. Const. Amend. 5. *Curtis* v. *Rives* (1942, 123 F. 2d 936, 75 U.S. App. D.C. 66).

Evidence, including uncontradicted showing that names of certain witnesses were not only known to accused's counsel at time of criminal trial, but also that "police incidental" on which those names were written was in possession of his counsel at that time, refuted accused's charges, made the basis of a petition for habeas corpus, that accused was not confronted with witnesses against him, in that police deliberately withheld certain persons from testifying, and that jurisdiction to convict and sentence accused was lost through denial of a constitutional right under U.S. Const. Amend. 5. *Id.*

In habeas corpus proceeding, evidence was insufficient to show that subpoenas issued to witnesses in accused's behalf were not served and that thereby accused was denied compulsory process for obtaining witnesses in his own behalf. *Id.*

An accused could not properly through his counsel argue to the jury in a criminal case that the testimony of named witnesses not called by the government must have been unfavorable to the government and contend in habeas corpus proceeding that he did not know of those witnesses. *Id.*

Where substance of petitioner's allegation was that he pleaded guilty on advice of his counsel and received a longer sentence than both hoped would be imposed, the petition was not sufficient to show that petitioner did not intelligently consent to waiver of jury trial and summary denial of petition for writ of habeas corpus was not improper. *Monroe* v. *Huff* (1944, 145 F. 2d 249, 79 U.S. App. D.C. 246).

Failure of counsel to file appeal, not discovered by accused until after time for appeal had elapsed, was not alone ground for discharge on habeas corpus. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

20. Trial proceedings

A petition for writ of "habeas corpus" may properly be used to challenge the jurisdiction of a court, but it cannot be used to review inconsistencies or even errors of law committed by a court of competent jurisdiction which are proper matters for review on appeal, but not on appeal from an order dismissing a petition for writ of habeas corpus. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Where petitioner, seeking writ of habeas corpus, had been adjudged guilty of contempt for failure to comply with order requiring him to turn over assets of deceased's estate, inconsistency, if any, between the turnover order which assumed that petitioner had possession of assets, and verdict of jury that petitioner had disposed of assets other than to the use of deceased, was not proper subject for review on habeas corpus. *Id.*

Where petitioner, seeking writ of habeas corpus, had been adjudged guilty of contempt for failure to comply with order requiring him to turn over assets of deceased's estate, alleged inconsistency between contempt decree and the turnover order, based on alternative nature of the turnover order, and the theory that a remedy at law was elected by entering judgment, with execution as at law, on the verdict evaluating the eloigned assets was not a proper subject for review on habeas corpus. *Id.*

Writ of habeas corpus cannot be used to inquire into official misconduct occurring prior to indictment and having no bearing on procedure of trial or upon jurisdiction of trial court. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289).

The use of writ of habeas corpus on ground that, during trial, defendant's constitutional rights were so far denied that court lost jurisdiction, is not justifiable unless circumstances are so exceptional that it is the only means of preserving those rights. *Fowler* v. *Gill*

(1946, 156 F. 2d 565, 81 U.S. App. D.C. 167, certiorari denied 67 S. Ct. 352, 329 U.S. 791, 91 L. Ed. 677 rehearing denied 67 S. Ct. 438, 329 U.S. 832, 91 L. Ed. 705).

21. Waiver of counsel

In habeas corpus proceeding presenting issue whether 17 year old boy competently and intelligently waived right to counsel in criminal case, the District Court should have taken evidence and determined whether, in light of his age, education and information, and all other pertinent facts, he sustained burden of proving that his waiver was not competently and intelligently made. *Williams* v. *Huff* (1944, 142 F. 2d 91, 79 U.S. App. D.C. 31).

Where record in prosecution for assault with dangerous weapon showed that accused was informed of his right to counsel and undertook to waive the right, but did not show that the waiver was competently and intelligently made, that issue was required to be determined in habeas corpus proceeding. *Id.*

Record of previous conviction which showed that accused was advised of his constitutional right to counsel which he expressly waived could not be attacked by oral testimony in habeas corpus proceeding. *Id.*

Where petitioner seeking writ of habeas corpus was seventeen years old at time of his plea of guilty, it created an inference of fact that his waiver of constitutional right to counsel was not intelligent, and corroborated testimony that he entered plea on advice of other prisoners who informed him that such a plea would give him a better chance for probation. *Id.*

Evidence of extreme nervousness and depression failed to establish, as ground for setting aside sentence on habeas corpus, incompetency of accused to waive indictment, trial by jury, and representation by counsel, and plead guilty to information charging housebreaking and grand and petit larceny. *Solis* v. *Clemmer* (1948, 168 F. 2d 155, 83 U.S. App. D.C. 113, certiorari denied 68 S. Ct. 1519, 334 U.S. 860, 92 L. Ed. 1781).

§ 16–1907. Traversing return—Pleading—Witnesses.

A person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention. The court of judge may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause pending in the court, if the court or judge is satisfied as to the materiality of the testimony proposed to be adduced. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–807 (Mar. 3, 1901, ch. 854, § 1149, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Decree of state court

In habeas corpus proceeding in the District for the custody of a minor child, a decree, in a state court having jurisdiction, awarding divorce and the custody of the child, is conclusive. *Burrowes* v. *Burrowes* (1935, 78 F. 2d 742, 64 App. D.C. 392).

§ 16–1908. Right of other persons to writ.

A person entitled to the custody of another person, unlawfuly confined or detained by a third person, as a parent, guardian, committee, or husband, entitled to the custody of a minor child, ward, lunatic, or wife, upon application to the court or a judge as provided by this chapter, and showing just cause therefor, under oath, is entitled to a writ of habeas corpus, directed to the person confining or detaining, requiring him forthwith to appear and produce before the court or judge the person so detained, and the same proceedings shall be had in relation thereto as provided for by this chapter. The court or judge, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of the person to the party legally entitled thereto. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–808 (Mar. 3, 1901, ch. 854, § 1150, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

Cross Reference

Custody of children in divorce cases, see § 16–911.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Abuse of discretion

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

2. Child's welfare, determination of

Where only action taken because of mother's violation of order awarding custody to grandfather was to cut off meager sum of $5 a week alimony and $15 a week for support of children, neither the violation of the order nor the retaliation could be given weight in determining question of children's present welfare, in habeas corpus proceeding instituted by grandfather after the children had become accustomed to home their mother had established and to schools of city in which the mother resided. *Cook* v. *Cook* (1943, 135 F. 2d 945, 77 U.S. App. D.C. 388).

In habeas corpus proceeding by parent to obtain custody of child, what is best for the child, rather than the natural right of the parent, is the controlling factor. *Holtsclaw* v. *Mercer* (1944, 145 F. 2d 338, 79 U.S. App. D.C. 252).

The rights of parent to child are secondary to welfare of child and the child's well-being is the paramount consideration. *Id.*

When jurisdiction of court is invoked to determine custody of a minor child, the court acts, not as an arbiter between contesting parents determining adversary rights in human chattels, but as parens patriae, protecting the child whose custody is in dispute and making its award solely according to the interest and welfare of the child, regardless of the settled or transient character of the parents' residence, or even of a child abandoned by its parents. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

In proceeding involving custody of children, where the pleadings and evidence reveal a situation which required action, court must act on behalf of the children and for their protection, regardless of anything previously said or done by any court, and the function of the Court of Appeals is only to review the question whether the trial court properly exercised its discretion with a view to the present welfare of the children. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

In determining custody of children, the question for the court is the welfare of the children which overrides all other considerations, even where the proceeding is in

habeas corpus, and the rights of the parents must yield to the interests and welfare of the children. *Id.*

3. Evidence

Evidence justified trial court in awarding custody of a minor child to its father as against the claims of the divorced mother who had been awarded the child's custody by decree in another state. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

4. Examination of parents' qualifications

In proceeding involving custody of children, the decision should not be based upon the adversary rights of the parents, but courts should require that the interest of the children be brought fully before it, and for this purpose the court should call to its aid experienced and disinterested persons, such as its probation officers or social workers in the Board of Public Welfare to make an unbiased examination of the qualifications of the parents and the circumstances which surround the children. *Boone* v. *Boone* (1945, 159 F. 2d 153, 80 U.S. App. D.C. 152).

5. Foreign decree

An order of the Maryland court awarding custody of a child to divorced mother, did not preclude a court of equity from assuming concurrent jurisdiction and passing subsequent orders relating to the custody of the child as its present welfare and happiness might warrant. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

A West Virginia order awarding custody of a minor to paternal grandmother, and adjudging the minor's mother in contempt for taking the child to the District of Columbia, was not binding on District of Columbia court in habeas corpus proceeding, although entitled to due weight, since ultimate question was the child's present and future welfare. *Kirk* v. *Kirk* (1945, 150 F. 2d 589, 80 U.S. App. D.C. 183).

Where order of West Virginia court awarding custody of minor to paternal grandmother was grounded on circumstance that the child could best recover from illness in the grandmother's home, but child had recovered from illness and was residing with the mother in the District of Columbia, the West Virginia order was not binding on the District of Columbia court which should determine, with the aid of whatever information might be obtainable from disinterested and experienced observers, what custody would best promote the child's welfare. *Id.*

6. Full faith and credit

A California decree determining custody of a child as between divorced parents, which decree was subject to modification at any time during minority of the child, was not entitled to full faith and credit in the District of Columbia in subsequent proceedings in which the paramount consideration was the child's welfare. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

The judgment is entitled to full faith and credit only as to issues considered and judicially determined, and in a custody case, such a judgment is entitled only to qualified consideration in another state where there are changes in circumstances. *Id.*

7. Guardianship proceedings

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

8. Jurisdiction

Where grandfather to whom New York court had awarded custody of minor children, instituted habeas corpus proceeding to obtain custody from their mother who had established home for them in District of Columbia, court had jurisdiction and owed to the children who were in District of Columbia duty to protect them and do things which appeared to be best for them without regard to anything any other court had previously done. *Cook* v. *Cook* (1943, 135 F. 2d 945, 77 U.S. App. D.C. 388).

In habeas corpus proceeding for custody of a minor child, where the father had been for some time a government employee stationed in Washington, D.C., and the child had been living with him just over the district line in Maryland for a year and a half, they were in a real sense members of the District of Columbia community and district court had jurisdiction to determine question of custody notwithstanding that the father had taken possession of the child in violation of decree of another state. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

If the court of the jurisdiction in which a child is found concludes that its custodian is unfit, the child may be taken from him and given to another. *Id.*

Children in the District of Columbia are subject to the jurisdiction of its courts as to matters of custody. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

9. Lunatic

The writ of habeas corpus in respect of lunacy is one of relief rather than of original adjudication. *Barry* v. *Hall* (1938, 98 F. 2d 222, 68 App. D.C. 850).

10. Parents as natural guardians

A mother is the natural guardian of her child, even though the child be illegitimate, and as mother and natural guardian she has right to writ of habeas corpus directed to any person unlawfully detaining her minor child to end that child be produced before court which shall determine which of parties is entitled to custody of child. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

11. Presumptions

The presumption that small children are better off with their mother is entitled to weight in determining their custody. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

12. Probate court decrees

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

13. Res judicata

In habeas corpus proceeding by grandfather to obtain custody of three minor children from their mother, prior order of New York court awarding custody to the grandfather was not "res judicata" on question of present welfare of the children where the mother had provided an adequate home for them and they had become accustomed to schools of city in which mother resided. *Cook* v. *Cook* (1943, 135 F. 2d 945, 77 U.S. App. D.C. 388).

An order regarding custody of minor children is conclusive regarding all matters prior to its promulgation, but doctrine of "res judicata" cannot settle question of children's welfare for all time to come, and it cannot prevent a court at a subsequent time from determining what is best for the children at that time. *Id.*

Judgments adverse to the father, both in North Carolina and in the District of Columbia, which he had failed to obey, were not res judicata of subsequent action brought by the children by their next friend to determine their custody so as to deprive the District Court of jurisdiction. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

A custody award is subject to change, upon a proper showing, so long as the court has control of the child, and

when the child comes under the control of another jurisdiction, its courts have equal power, and only to the extent that issues presented in the earlier case were judicially determined does the doctrine of res judicata and the full faith and credit clause apply. *Id.*

Father's removal, after Pennsylvania habeas corpus decree awarding him custody of child, from apartment in which he was living with sister and brother-in-law to another apartment in which he lived alone with 7-year-old child who was without supervision during the day while father was engaged with his employment was such a substantial change in conditions surrounding child that Pennsylvania decree was not res judicata, and custody of child would be awarded to mother who was fit and proper person to care for child and who lived with parents in good residential district of Washington. *Matthews* v. *Matthews* (1948, 80 F. Supp. 560).

14. Unlawfully confined or detained

Habeas corpus not the proper remedy where the child was not unlawfully confined or detained. *Church* v. *Church* (1921, 270 F. 359, 50 App. D.C. 237). See, also, *Burrowes* v. *Burrowes* (1935, 78 F. 2d 742, 64 App. D.C. 392).

Where father residing in Pennsylvania was awarded custody of child during school year by Pennsylvania decree, and mother residing in District of Columbia was awarded custody of child during Christmas and summer holidays, and mother refused to deliver child to father at end of summer holiday, habeas corpus in United States District Court for District of Columbia was the father's proper remedy. *Matthews* v. *Matthews* (1948, 80 F. Supp. 560).

§ 16–1909. Construction of chapter.

This chapter does not affect any provision of chapter 153 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1.)

REVISION NOTES

Section is new, and is inserted for the purpose of construction.

Chapter 153 of Title 28, United States Code, also relates to habeas corpus and applies to Federal courts generally, including the United States District Court for the District of Columbia. Upon the reenactment of the provisions carried into this chapter, they will constitute a later enactment than Title 28, United States Code, which was enacted in 1948. Considering the local character of the provisions carried into this chapter, there should not arise, as a general rule, even without this section, any question of conflict. However, this section is inserted as a precautionary measure.

Chapter 21.—JOINT CONTRACTS

Sec.
16–2101. Definition of joint and several contracts.
16–2102. Death of party to the contract.
16–2103. Extinguishment or merger of cause of action.
16–2104. Death after action brought—Legal representatives.
16–2105. Proof of joint liability unnecessary—Judgment.
16–2106. Separate composition or compromise.

§ 16–2101. Definition of joint and several contracts.

For the purposes of action thereon, a contract or obligation entered into by two or more persons, whether:

(1) the persons are partners or joint contractors;

(2) the contract is under seal or not;

(3) it is written or verbal; or

(4) it is expressed to be joint and several or not—

is deemed to to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–901 (Mar. 3, 1901, ch. 854, § 1205, 31 Stat. 1380).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Executor of joint obligor 2
In general 1
Joint liability 3
Nonsuit as to minors 4
Remedial in effect 5
Separate suit 6

1. In general

In the case of a joint and several contract, an unsatisfied judgment against one of the promisees is no bar to a subsequent action against the other, and the statute places a joint contract for the payment of money on the same footing as a several contract, with respect to the right of suit thereon. *Harris* v. *Leonhardt* (2 App. D.C. 318).

A creditor should not be allowed to sue jointly and separately at the same time, nor prosecute more than one suit, if all the parties bound by the contract can be proceeded against together in a single action. *Id.*

If the contract be joint or joint and several, and the parties be sued jointly, the recovery must be general against the parties, but as to the married woman defendant, the award of execution must be against her sole and separate estate acquired and held under the statute, at the date of the judgment if real estate, or at time of delivery of execution to the marshal, if personal. *Magruder* v. *Belt* (7 App. D.C. 303).

2. Executor of joint obligor

Executor of a deceased joint obligor may be sued at law with his co-obligor. *White* v. *Connecticut General Life Ins. Co.* (34 App. D.C. 460, error dismissed 31 S. Ct. 219, 218 U.S. 684, 54 L. Ed. 1208).

3. Joint liability

Under contract which called for members of creditor's committee of insolvent corporation to assume responsibility for payment of attorney's fee and under which members of committee were identified as promisors, each member was not bound by a separate promise to pay pro rata share but members were jointly liable for entire fee. *V. B. Welch* v. *R. W. Sherwin et al.* (1962, 300 F. 2d 716, 112 U.S. App. D.C. 124).

4. Nonsuit as to minors

In a suit against the owners of property, some of whom are minors, to recover a brokerage commission, it is proper, under this section and § 1209 (§ 16–905), after issue joined to enter a nonsuit as to the minors and proceed against the remaining defendants. *Rhees* v. *Morris* (1922, 280 F. 1001, 52 App. D.C. 27).

Issues having been joined a nonsuit may be entered as to the minors, and the suit proceeded against the remaining adult defendants. *Id.*

5. Remedial in effect

This section "merely affects the remedy. It releates wholly to procedure. It does not convert a joint instrument into a joint and several instrument, or change a joint obligor into a joint and several obligor. The contract and the relations of the obligations of the contractors remain unchanged." *White* v. *Connecticut General Life Ins. Co.* (34 App. D.C. 460, error dismissed 31 S. Ct. 219, 218 U.S. 684, 54 L. Ed. 1208).

6. Separate suit

Facts that judgment against some of several defendants, jointly and severally liable, does not extinguish or merge liability of those not served and that those not served may be sued separately under District of Columbia law does not require that those not served be sued separately if they have actually been named as defendants and served but service has been erroneously quashed. *Youpe* v. *Moses et al.* (1954, 213 F. 2d 613, 94 U.S. App. D.C. 21).

§ 16–2102. Death of party to the contract.

If a person specified by section 16–2101 dies, his executors, administrators, or heirs are bound by the contract in the same manner and to the same extent

as if the contract or obligation were expressed to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–902 (Mar. 3, 1901, ch. 854, § 1206, 31 Stat. 1380).

Changes are made in phraseology.

§ 16–2103. Extinguishment or merger of cause of action.

Where, with respect to a contract specified by section 16–2101, an action is brought against:

(1) all the parties thereto, but service of process is had on some, only, of the defendants; or

(2) some, only, of the parties thereto, and service of process is had on them only—

a judgment against the parties so served does not work an extinguishment or merger of the cause of action on which the judgment is founded as respects the parties not so served. They shall remain liable to be sued separately. (Dec. 23, 1963, 77 Stat. 585 Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–903 (Mar. 3, 1901, ch. 854, § 1207, 31 Stat. 1380).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeal 2
In general 1
Separate suit 3

1. In general

Where a woman borrowed money under false pretenses but conduct of her husband with regard to transactions was such he became obligated to repay the money borrowed, judgment rendered in action for money lent against the woman in Virginia was no bar to recovery in action for money lent against husband in District of Columbia. *Grimes* v. *Adams* (1952, 105 F. Supp. 30).

2. Appeal

If, in action for breach of contract, plaintiff, after trial upon merits, secures judgment in his favor against the 12 defendants who answered, he may nevertheless appeal from such judgment upon ground that he was entitled to judgment against two other defendants because quashing of service upon such defendants was erroneous, and judgment against the 12 will not have worked an extinguishment or merger of cause of action against the other two defendants. *Youpe* v. *Moses* (1954, 213 F. 2d 613, 94 U.S. App. D.C. 21).

3. Separate suit

Facts that judgment against some of several defendants, jointly and severally liable, does not extinguish or merge liability of those not served and that those not served may be sued separately does not require that those not served be sued separately if they have actually been named as defendants and served but service has been erroneously quashed. *Youpe* v. *Moses* (1954, 213 F. 2d 613, 94 U.S. App. D.C. 21).

§ 16–2104. Death after action brought—Legal representatives.

When one of several defendants in an action dies after the commencement of the action, his legal representatives may be made parties to the action as directed by chapter 1 of Title 12. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–904 (Mar. 3, 1901, ch. 854, § 1208, 31 Stat. 1380).

Minor changes are made in phraseology.

§ 16–2105. Proof of joint liability unnecessary—Judgment.

In actions ex contractu against alleged joint debtors it is not necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action. He is entitled to recover, as in actions ex delicto, against such of the defendants as are shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him, and judgment shall be rendered as if the others had not been joined in the action. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–905 (Mar. 3, 1901, ch. 854, § 1209, 31 Stat. 1380).

Minor changes are made in phraseology.

§ 16–2106. Separate composition or compromise.

Any one of several joint debtors when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect as is provided in the case of parties by chapter 2 of Title 41. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–906 (Mar. 3, 1901, ch. 854, § 1210, 31 Stat. 1380).

The only change is the substitution, for the reference to "sections 41–101 to 41–131, 41–201 to 41–204", of a reference to the particular chapter in Title 41 relating to separate composition or compromise settlements with creditors, upon the dissolution of partnerships. Chapter 2 of Title 41 of D.C. Code, 1961 ed., embraces sections 41–201 to 41–204, cited above. The other sections cited above are not relevant.

NOTES TO DECISIONS UNDER PRIOR LAW

1. No release of other judgment debtors

Compromise with one of several judgment debtors, and an entry of a satisfaction of the judgment as to him, will not operate as a release of the other judgment debtors. *Bunch* v. *United States ex rel. Keppler* (40 App. D.C. 156).

Chapter 23.—JUVENILE COURT PROCEEDINGS

SUBCHAPTER I.—JUVENILE DELINQUENCY PROCEEDINGS AND RELATED MATTERS

Sec.
16–2301. Definitions.
16–2302. Information regarding child—Investigation—Petition—Contents.
16–2303. Summons—Notice—Custody of child.
16–2304. Service of summons—Time of hearing.
16–2305. Failure to obey summons—Contempt—Warrant.
16–2306. Taking child into custody—Release to custody of parent, guardian, custodian, or probation officer—Limitation or detention.
16–2307. Hearing—Exclusion of Public—Jury trial.
16–2308. Determination and order of Court.
16–2309. Modification or revocation of order—Petition—Return of child, or other action.
16–2310. Appointment of guardian—Custody as between parents.
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SUBCHAPTER II.—PATERNITY PROCEEDINGS

16–2341. Definitions.
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Sec.
16–2349. Judgment.
16–2350. Support payments.
16–2351. Voluntary agreement for support—Approval—Order of court—Exclusion of other remedies.
16–2352. Death of defendant—Liability of estate.
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SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

16–2381. Payments for support and maintenance under section 29–903 to 22–905—Voluntary payments—Disbursement.
16–2382. Jury.
16–2383. Suspension of impostion or execution of sentence.
16–2384. Fees prohibited.

SUBCHAPTER I.—JUVENILE DELINQUENCY PROCEEDINGS AND RELATED MATTERS

§ 16–2301. Definitions.

As used in this subchapter:

"adult" means a person 18 years of age or older; and

"child" means a person under 18 years of age. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 11–906 (Mar. 19, 1906, ch. 960, § 5, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Section is based on subsec. (b) of section 11–906 of D.C. Code, 1961 ed. For remainder of that section, see tables.

The provisions defining "the court" as meaning the juvenile court of the District of Columbia, and "judge" as meaning the judge of the juvenile court, are omitted as unnecessary. Section 16–2302 gives the complete name of the court, and the other sections in this subchapter are reworded or related so that there is no question as to what court and judge are meant. Further, there are now three judges of the court. See, also, section 11–1551 vesting in the Juvenile Court jurisdiction of matters to which this subchapter relates, and other provisions in chapter 15 of Title 11.

Changes are made in phraseology.

The definitions contained in section 11–906 of D.C. Code, 1961 ed., also related to the same terms as used in provisions carried into chapter 15 of Title 11, which are from the same chapter in D.C. Code, 1961 ed. However, as carried into chapter 15 of Title 11, those provisions are reworded in such a way that it is not necessary to extend the reference in the opening clause in this section to that chapter, nor to define the terms as used therein. See revision note under section 11–1551.

§ 16–2302. Information regarding child—Investigation—Petition—Contents.

When a person gives to the Director of Social Work of the Juvenile Court of the District of Columbia, or other officer of the court duly designated as his representative, information in his possession that a child is within the provisions of section 11–1551, a duly designated officer of the court shall make preliminary investigation to determine whether the interests of the public or of the child require that further action be taken, and report his finding, together with a statement of the facts, to the Director of Social Work. When practicable, the inquiry shall include a preliminary investigation of the home and environmental situation of the child, his previous history, and the circumstances that were the subject of the information. When the Director of Social Work finds that jurisdiction should be acquired, he shall, after consultation with and approval by the corporation counsel or his assistant assigned to the court, authorize a petition to be filed. Where the Director fails so to find, the person giving information to the Director may present the facts to the corporation counsel or his assistant, who, after investigation by an officer of the court as herein provided, may authorize a petition to be filed. The proceedings shall be entitled, "In the matter of ————, a child under eighteen years of age."

The petition shall be verified by the officer making the investigation, or other person having personal knowledge of the case, and shall allege briefly the facts which bring the child within the provisions of section 11–1551, and shall state the name, age, and residence of—

(1) the child;

(2) his parents;

(3) his legal guardian, if there be one;

(4) the person or persons having custody or control of the child; and

(5) the nearest known relative, if no parent or guardian can be found.

When any of the facts herein required are not known by the petitioner the petition shall so state. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–908 (Mar. 19, 1906, ch. 960, § 7, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596 (597)).

NOTES TO DECISIONS UNDER PRIOR LAW

Applicability of Federal Rules 1
Arraignment without unnecessary delay 2
Double jeopardy 3
Investigation 4
Judicial notice 5
Jurisdiction 6
Nature of proceedings 7
Right to counsel 8

1. Applicability of Federal Rules

The Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States* v. *White* (1957, 153 F. Supp. 809).

Rule of Criminal Procedure, U.S. Code, title 18, Appendix, under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

2. Arraignment without unnecessary delay

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States* v. *White* (1957, 153 F. Supp. 809).

3. Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

4. Investigation

Waiver of Juvenile Court's jurisdiction over accused depends on full investigation by Juvenile Court, and petition-summons procedure is required only when director of social work of Juvenile Court finds, after investigation that Juvenile Court jurisdiction should be acquired. *J. L. Green* v. *United States* (1962, 308 F. 2d 303, 113 U.S. App. D.C. 348).

Failure of Juvenile Court to order filing of petition followed by issuance and service of summons did not invalidate Juvenile Court's waiver of jurisdiction over accused where there had been a full investigation before waiver and director of social work of Juvenile Court recommended waiver of jurisdiction. *Id.*

Accused who claims that full investigation was not made by Juvenile Court before its waiver of jurisdiction could make that contention in District Court which upon sufficient allegations should conduct necessary proceedings to determine whether such investigation was made and whether accused should nevertheless be afforded parens patriae treatment provided in Juvenile Court. *Id.*

Where accused's conviction was reversed for plain error and accused claimed that Juvenile Court's waiver of jurisdiction over him was invalid, on remand District Court should make available for inspection by accused's counsel all pertinent records of Juvenile Court with due regard to necessity of keeping secret any specific parts or sources thereof and such records could be sealed and included in record on any further appeal. *Id.*

"Full investigation" which section 11–914 requires before juvenile court can waive jurisdiction to district court includes informal hearings to determine whether to waive jurisdiction and jeopardy does not attach at that point. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

5. Judicial notice

The United States District Court for the District of Columbia would take judicial notice that the procedure in Juvenile Court for District of Columbia provided for a preliminary ex parte investigation by Director of Social Service before determining whether Juvenile Court should take jurisdiction in a case where a juvenile was charged with a crime and that in the meantime, no hearing was held. *United States* v. *White* (1957, 153 F. Supp. 809).

6. Jurisdiction

Where petition in Juvenile Court in District of Columbia to have infant children declared to be without adequate parental care and to have them committed to Board of Public Welfare, recited that children were then in custody of the Board, and there was no evidence that the children were not residents of the District, and their father was a resident of the District, Juvenile Court would be deemed to have had jurisdiction of children. *In re Lambert et al.* (1953, 203 F. 2d 607, 92 U.S. App. D.C. 104).

7. Nature of proceedings

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to such proceedings. *Pee* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

8. Right to counsel

Where minor's probation was revoked and there was no finding that child's commitment to an institution was required in their own best interests and as necessary for protection of society, and mother asked for appointment of an attorney but her request was rejected and liberty of child was in the balance, assistance of counsel was necessary and denial thereof vitiated the proceedings and district court erred in dismissing habeas corpus petition. *McDaniel, as parent etc.* v. *Shea, Director etc.* (1960, 278 F. 2d 460, 108 U.S. App. D.C. 15).

Right to be heard when personal liberty is at stake requires effective assistance of counsel in a juvenile court. *Id.*

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1958, 250 F. 2d 419, 102 U.S. App. D.C. 94).

The right to be heard when personal liberty is at stake requires the effective assistance of counsel in a juvenile court as much as it does in a criminal court and juvenile has right to counsel in such a proceeding. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

§ 16–2303. Summons—Notice—Custody of child.

After a petition has been filed pursuant to section 16–2302, unless the parties hereinafter named voluntarily appear, the court shall issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have custody or control of the child to appear personally and bring the child before the court at a time and place stated. Where the person so summoned is other than the parent or guardian of the child, the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, except as hereinafter provided. If the child is married, the other spouse shall also be so notified. Summons may be issued requiring the appearance of any other person whose presence is necessary.

Where it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the court may cause to be endorsed upon the summons an order that the officer serving it shall at once take the child into custody. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–909 (Mar. 19, 1906, ch. 960, § 8, 34 Stat. 73; June 1, 1933, ch. 309, 52 Stat. 596 (598)).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. General appearance

Attorney's entry of appearance for mother in proceeding in Juvenile Court in District of Columbia wherein infant children were found to be without adequate parental care and were committed to Board of Public Welfare constituted waiver by mother of any question of proper service of process on her. *In re Lambert et al.* (1953, 203 F. 2d 607, 92 U.S. App. D.C. 104).

§ 16–2304. Service of summons—Time of hearing.

Service of summons issued pursuant to section 16–2303 shall be made personally by the delivery of a true and attested copy to the person summoned. Where reasonable, but unsuccessful efforts have been made to make personal service of summons or notice and it appears that it is impracticable to do so, the court may order service of summons or notice by registered mail to the last-known address or by publication, or both, as it deems necessary. It is sufficient to confer jurisdiction if service is effected at any time before the date fixed in the summons for the return thereof, but, on request of the parent or guardian or person having custody of the child, the hearing on the petition may not take place until three days after service of the summons.

The United States marshal for the District of Columbia or his deputy shall execute the orders and processes of the Court in the same manner as he executes those of the United States District Court for the District of Columbia, and shall designate at least one of his deputies to serve at the court, where he shall perform such services as the judge requires. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–910 (Mar. 19, 1906, ch. 960, § 9, 34 Stat. 74; June 1, 1938, ch. 309, 52 Stat. 596 (598); June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Waiver of service

Attorney's entry of his appearance for mother in proceeding wherein infant children were found to be without adequate parental care and were committed to Board of Public Welfare constituted waiver of any question of proper service of process on mother. *In re Lambert* (D.C. Mun. App. 1952, 86 A. 2d 411).

§ 16–2305. Failure to obey summons—Contempt—Warrant.

When a person summoned as provided by sections 16–2303 and 16–2304, without reasonable cause, fails to appear, he may proceeded against for contempt of court. When the summons can not be served, or the parties served fail to obey it, or the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant may be issued against the parent or guardian or against the child himself. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–911 (Mar. 19, 1906, ch. 960, § 10, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (598)).

Changes are made in phraseology.

§ 16–2306. Taking child into custory—Release to custody of parent, guardian, custodian, or probation officer—Limitation on detention.

(a) When an officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon, the child may be released in the custody of a parent, guardian, or custodian. If not so released, the child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to a place of detention provided by the Board of Commissioners of the District of Columbia or its authorized representative, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court.

(b) A child whose custody has been assumed by the court may, pending final disposition of the case, be released by the court in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, the child, pending the hearing of the case, shall be detained in a place of detention provided by the Board of Commissioners of the District of Columbia or its authorized representative, subject to further order of the court.

(c) This subchapter does not forbid a peace officer, police officer, or probation officer from immediately taking into custody a child:

(1) who is found violating a law or ordinance; or

(2) who is reasonably believed to be a fugitive from his parents or from justice; or

(3) whose surroundings are such as to endanger his health, morals, or safety, unless immediate action is taken.

In a case specified by this subsection, the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided by this subchapter and chapter 15 of Title 11. A child so taken into custody may not be held in a place of detention for a period longer than five days, excluding Sundays and holidays, unless the court orders him detained for a further period. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–912 (Mar. 19, 1906, ch. 960, § 11, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (598); June 12, 1952, ch. 417, § 1, 66 Stat. 134), and on Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 58, June 30, 1953, as amended July 31, 1953, and Aug. 19, 1954; Reorg. Ord. No. 57–1027, June 6, 1957.

The Board of Public Welfare, referred to in section 11–912 of D.C. Code, 1961 ed., was, along with a number of other District agencies and offices, abolished, and its functions transferred to the Board of Commissioners of the District of Columbia, by Presidential Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824, which authorized the Board of Commissioners to create new agencies and offices and delegate its functions thereto. Pursuant to that Plan, the Board of Commissioners, after temporarily continuing the functions, so transferred, in the agencies and offices so abolished, by Reorg. Ord. No. 1, July 1, 1952, created the Department of Public Health by Reorg. Ord. No. 57, June 30, 1953, and the Department of Public Welfare by Reorg. Ord. No. 58, June 30, 1953, as amended, and abolished their predecessors, effective Aug. 15, 1953. Part V of Reorg. Ord. No. 58 transferred specified functions of the former Board of Public Welfare to the Department of Public Health and the Department of Public Welfare, so created. However, under Presidential Reorg. Plan No. 5, eff. July 1, 1952, referred to above, the ultimate responsibility to perform the delegated functions is in the Board of Commissioners, which may change the present organization at any time. Therefore, in two places in this revised section, the reference, "Board of Public Welfare" is changed to "Board of Commissioners of the District of Columbia or its authorized representative".

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Applicability of Federal Rules 1
Arraignment without unnecessary delay 2
Confessions 3
Constitutional safeguards 4
Detention without arrest record 5
Double jeopardy 6
Judicial notice 7
Nature of proceedings 8
Procedure 9
Rehearing after dismissal 10
Right to bail 11

1. Applicability of Federal Rules

Where in a criminal prosecution against juveniles the district judge was proceeding under the regular procedure of the District Court, and the accused had been indicted and they were being tried by a jury, the trial was public and they were found guilty of the offenses and the court sentenced them to the penitentiary, act of the district judge in importing from the Juvenile Court a rule of

evidence applicable in that court but not applicable in the regular procedure of the District Court was error, since the juveniles had been removed from the processes especially provided for juveniles and the proceedings as to them being "the regular procedure" of the District Court which were controlled by the federal rules. *Pee, Curtis, Johnson and Magruder* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

The Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States* v. *White* (1957, 153 F. Supp. 809).

2. Arraignment without unnecessary delay

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States* v. *White* (1957, 153 F. Supp. 809).

3. Confessions

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is dutybound thoroughly to investigate circumstances under which such statements were made. *Id.*

4. Constitutional safeguards

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

5. Detention without arrest record

The arrest of a juvenile by officers having reasonable grounds for belief that the juvenile had committed a felony, and the detention of the juvenile at police station for three hours without making any record of the arrest, was not a violation of this section. *Harper* v. *Strange* (1947, 158 F. 2d 408, 81 U.S. App. D.C. 349).

6. Double jeopardy

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

7. Judicial notice

The United States District Court for the District of Columbia would take judicial notice that the procedure in Juvenile Court for the District of Columbia provided for a preliminary ex parte investigation by Director of Social Service before determining whether Juvenile Court should take jurisdiction in a case where a juvenile was charged with a crime and that in the meantime, no hearing was held. *United States* v. *White* (1957, 153 F. Supp. 809).

8. Nature of proceedings

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to such proceedings. *Pee, Curtis, Johnson and Magruder* v. *United States* (1959, 247 F. 2d 556, 107 U.S. App. D.C. 47).

The Juvenile Court Act, this subchapter, did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

9. Procedure

If the District Court decides to pursue the normal criminal law processes with respect to juveniles, all the constitutional protections applicable to criminal cases and all the rules of criminal procedure in that court apply to such a case just as they apply to any other case of an alleged crime, but if the district judge decides to conduct the case under the powers conferred upon the Juvenile Court, the rights of the child and the rules applicable to the Juvenile Court procedure apply. *Pee, Curtis, Johnson and Magruder* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

Under the system provided for child offenders under the Juvenile Court Act, this subchapter, the District Court must make a clear choice between the procedure and the processes which it will apply in case of a juvenile as to whom the Juvenile Court has waived jurisdiction, and while it is not necessary that the court formally make such a choice its choice may be implicit in the manner in which it proceeds but it cannot proceed in part under its "regular procedure" and in part under the "powers conferred upon the Juvenile Court" and it must do one or the other. *Id.*

10. Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

11. Right to bail

Where this section authorizes juvenile court, pending arraignment and disposition of case, either to release the juvenile in the custody of a parent, guardian, custodian, or probation officer, or else to cause him to be detained in such place of detention as provided, and where this section is silent on the subject of bail, constitutional guarantees as to the right to bail are applicable and will prevail. *Trimble* v. *Stone, Supt. etc.* (1960, 187 F. Supp. 483).

Even though proceedings in Juvenile Court are denominated civil and not criminal, and even though, theoretically, commitment by Juvenile Court to training school allegedly involves only treatment and not punishment, constitutional guarantees regarding bail are applicable to proceedings before Juvenile Court. *Id.*

§ 16–2307. Hearing—Exclusion of public—Jury trial.

The court may conduct a hearing pursuant to this subchapter in an informal manner, and may adjourn the hearing from time to time. The general public shall be excluded from the hearing and only such persons as have a direct interest in the case and their representatives may be admitted except that the judge presiding at the hearing, by rule of court or special order, may admit such other persons as he deems to have a legitimate interest in the case or the work of the court. Cases involving children may be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury unless a jury is demanded by the child, his parent, guardian, or the court. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–915 (Mar. 19, 1906, ch. 960, § 14, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596, (599); Aug. 3, 1951, ch. 291, § 4, 65 Stat. 154; June 12, 1952, ch. 417, § 2, 66 Stat. 134).

Section is based on first paragraph of section 11–915 of D.C. Code, 1961 ed. Remainder of that section is carried into section 16–2308 herein.

Words "the judge presiding at the hearing" are substituted for "the judge" for the purpose of clarification, since there are now three judges of the Juvenile Court. [See section 11–1502 herein.]

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Confessions 1
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1. Confessions

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is dutybound thoroughly to investigate circumstances under which such statements were made. *Id.*

2. Constitutional safeguards

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

U.S. Code, title 18, § 4082, providing that persons convicted of an offense against the United States shall be committed for such term of imprisonment as court may direct to custody of Attorney General and that authority conferred upon Attorney General shall extend to all persons committed to National Training School for Boys, is directed to convictions of offenses against United States and in District Courts of the United States, and does not apply to persons committed under this section stating that no adjudication upon status of any child shall be deemed a conviction of a crime. *Cogdell* v. *Reid* (1959, 183 F. Supp. 102).

3. Custody of infant

Under Juvenile Court Act, this subchapter, juvenile cannot be committed in civil or equitable proceedings to any institution designed for custody of persons convicted of crime. *White* v. *Reid et al.* (1954, 126 F. Supp. 867).

4. Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

5. Evidence

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care *In re F. E. Mullen and M. A. Mullen* (D.C. Mun. App. 1958, 144 A. 2d 919).

While juvenile courts are not bound by technical rules of evidence, police officer's testimony, on trial of minor for taking property without right, that defendant told witness that articles taken were on porch of defendant's home, and that witness then dispatched thereto another officer, who returned with articles, was insufficient, aside from defendant's confession, to establish his guilt. *In re Davis* (D.C. Mun. App. 1951, 83 A. 2d 590).

6. Exhibition of child to jury

In bastardy case, motion to exhibit child to jury to show lack of resemblance to defendant was properly denied in absence of a foundation of striking or peculiar nonresemblance. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

7. Full investigation

"Full investigation" which section 11–914 requires before juvenile court can waive jurisdiction to district court includes informal hearings to determine whether to waive jurisdiction and jeopardy does not attach at that point. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

8. Issue on appeal

On appeal from Juvenile Court's order denying motion to set aside its order committing a minor to Department of Public Welfare on his acknowledgment of allegations of his use of automobile without owner's consent and permit him to enter plea of not guilty on ground of violation of his constitutional rights by judge's failure to advise him of right to assistance of counsel, only determinations to be made by Municipal Court of Appeals are whether Juvenile Court proceedings were in conformity with statutory requirements and whether there was a denial of due process of law. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

9. Jurisdiction

That evidence failed to support petition in proceeding before juvenile court of District of Columbia involving a question of adequate parental care of a 15 year old girl did not affect the court's "jurisdiction" to hear the proceeding and to make an order adjudging that the girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her, although evidence made the court's action erroneous and subject to reversal on appeal. *In re Stuart* (1940, 114 F. 2d 825, 72 App. D.C. 389).

The juvenile court of the District of Columbia had "jurisdiction" to make an order adjudging that a 15 year old girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her where parties were before the court, and case described in petition was within class of cases which this chapter gave the court power to deal with, and petition on its face stated a cause of action. *Id.*

10. Nature of proceeding

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to such proceedings. *Pee, Curtis, Johnson, and Magruder* v. *United States* (1959, 274 F. 2d 556, 707 U.S. App. D.C. 47).

The Juvenile Court Act, this subchapter, did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions

governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control was not a criminal or common law proceeding but was a statutory proceeding having for its purpose determination of best interest of daughter. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

11. Preliminary hearing

Constitution does not guarantee right to preliminary hearing. *United States* v. *Dickerson* (1958, 168 F. Supp. 899).

12. Procedure

Where in a criminal prosecution against juveniles the district judge was proceeding under the regular procedure of the District Court, and the accused had been indicted and they were being tried by a jury, the trial was public and they were found guilty of the offenses and the court sentenced them to the penitentiary, act of the district judge in importing from the Juvenile Court a rule of evidence applicable in that court but not applicable in the regular procedure of the District Court was error, since the juveniles had been removed from the processes especially provided for juveniles and the proceedings as to them being "the regular procedure" of the District Court which were controlled by the federal rules. *Pee, Curtis, Johnson, and Magruder* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

If the District Court decides to pursue the normal criminal law processes with respect to juveniles, all the constitutional protections applicable to criminal cases and all the rules of criminal procedure in that court apply to such a case just as they apply to any other case of an alleged crime, but if the district judge decides to conduct the case under the powers conferred upon the Juvenile Court, the rights of the child and the rules applicable to the Juvenile Court procedure apply. *Id.*

Under the system provided for child offenders under the Juvenile Court Act, this subchapter, the District Court must make a clear choice between the procedure and the processes which it will apply in case of a juvenile as to whom the Juvenile Court has waived jurisdiction, and while it is not necessary that the court formally make such a choice its choice may be implicit in the manner in which it proceeds but it cannot proceed in part under its "regular procedure" and in part under the "powers conferred upon the Juvenile Court" and it must do one or the other. *Id.*

13. Protection from parental neglect

The law will protect the child from parental neglect even as against natural parent where necessary. *In re Custody of a Minor* (1957, 250 F. 2d 419, 102 U.S. App. D.C. 94).

In proceeding wherein parents are charged with inadequate care of minor, public policy and right of child require that if charge of neglect is true the child be removed from control of parents and purpose of proceeding is not punishment of parents but protection of the child, and if liberty can be said to be restrained that is only an incident of, not the purpose of, the removal. *Id.*

14. Purpose

The objective of Juvenile Court Act, this subchapter, is rehabilitation, not punishment, and institution to which delinquent child is sent is not penal in nature, but one for rehabilitation and training purposes. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

15. Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

16. Right of appeal

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter was the real party in interest and "party aggrieved" by order of commitment within statute providing that any "party aggrieved" by final order of Juvenile Court may appeal therefrom to the Municipal Court of Appeals. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

17. Right to counsel

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1957, 250 F. 2d 419, 102 U.S. App. D.C. 94).

Where the family of a juvenile concerning whom proceedings have been instituted in juvenile court is indigent, court is required to appoint counsel. *Shioutakon* v. *District of Columbia* (1955, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 636).

Since constitutional safeguards due accused in criminal proceeding are inapplicable in juvenile delinqeuncy hearing, Juvenile Court judge's failure to advise minor, charged with using automobile without owner's consent, of his right to assistance of counsel, was not error warranting reversal of court's order denying motion to set aside its order committing minor to Department of Public Welfare on his acknowledgment of such allegation and permit him to enter plea of not guilty. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

18. —— Jury trial

In proceeding in Juvenile Court in the District of Columbia to have two infant children declared to be without adequate parental care and to have them committed to Board of Public Welfare, mother of the children was not entitled under statute to jury trial. *In re Lambert et al.* (1953, 203 F. 2d 607, 92 U.S. App. D.C. 104).

A statute providing that court shall hear and determine all cases of children without a jury, unless a jury be demanded by the child, his parent, or guardian or the court, does not enlarge the right to trial by jury in all cases of children, but only preserves it where a constitutional right to jury trial exists provided seasonable demand therefor is made. *In re Lambert* (D.C. Mun. App. 1952, 86 A. 2d 411).

19. Rules of Criminal Procedure

Rule of Criminal Procedure under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

20. Sufficiency of findings

A finding that infant's welfare and the safety and protection of the public could not be adequately safeguarded without removing infant from his home and parents was not sustained by the evidence. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

21. Transfer to other prison

Where petitioners while subject to jurisdiction of the Juvenile Court were committed to a training school and during their confinement there were transferred by Attorney General to federal institutions for adult offenders, motions by the petitioners requesting their discharge if treated as petitions for writs of habeas corpus could not be considered in view of the absence of petitioners from the geographic jurisdiction. *Thompson and Green, Jr.* v. *District of Columbia* (D.C. Mun. App. 1960, 158 A. 2d 687).

§ 16-2308. Determination and order of the Court.

(a) When the court finds that the child comes within the provisions of this subchapter and section 11-1551, it may by order duly entered:

(1) place the child on probation or under supervision in his own home or in the custody of a

relative or other fit person, upon such terms as the court determines;

(2) commit the child to the Board of Commissioners of the District of Columbia or its authorized representative; or to the National Training School for Boys if in need of such care as is given in the school; or to a qualified suitable private institution or agency willing and able to assume the education, care, and maintenance of the child without expense to the public; or

(3) make such further disposition of the child as may be provided by law and as the court deems to be best for the best interests of the child.

Paragraphs (1), (2), and (3) of this subsection do not authorize the removal of the child from the custody of his parents unless his welfare and the safety and protection of the public can not be adequately safeguarded without the removal.

(b) In committing a child to custody other than that of its parent, the court may, after giving the parent a reasonable opportunity to be heard, adjudge that the parent shall pay in such manner as the court directs a sum that will cover in whole or in part the support of the child. If the parents willfully fails or refuses to pay the sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence.

(c) When the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child.

(d) An adjudication upon the status of a child in the jurisdiction of the court does not operate to impose any of the civil disabilities ordinarily imposed by conviction, and a child is not deemed a criminal by reason of an adjudication. An adjudication is not deemed a conviction of a crime, and a child may not be charged with or convicted of a crime in any court, except as provided by section 11-1553. The disposition made of a child, or evidence given in the court, is not admissible as evidence against the child in any case or proceeding in any other court, and the disposition, or evidence, or adjudication, does not operate to disqualify a child in any future civil-service examination, appointment, or application for public service under either the Government of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-915 (Mar. 19, 1906, ch. 960, § 14, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (599); Aug. 3, 1951, ch. 291, § 4, 65 Stat. 154; June 12, 1952, ch. 417, § 2, 66 Stat. 134).

Section is derived from all of section 11-915 of D.C. Code, 1961 ed., except the first paragraph thereof. The first paragraph is carried into section 16-2307 herein.

In subsec. (a)(2), the reference, "Board of Public Welfare" is changed to "Board of Commissioners of the District of Columbia or its authorized representative". See revision note under section 16-2306 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Nature of proceedings

Juvenile court proceedings are civil, and petition need only contain brief statement of facts giving court jurisdiction. *In the Matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

§ 16-2309. Modification or revocation of order—Petition—Return of child, or other action.

An order of commitment or probation made by the court in the case of a child may be modified or revoked by the court from time to time.

A parent, guardian, or next friend of a child who has been committed by the court to the custody of an institution, agency, or person, may at any time file with the court a verified petition, making application for modification or revocation of an order of commitment or probation, stating that the institution, agency, or person has denied application for the release of the child or has failed to act upon the application within a reasonable time. When the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that the child be restored to the custody of its parent or guardian, or be retained in the custody of the institution, agency, or person; and may direct the institution, agency, or person to make such other arrangements for the child's care and welfare as the circumstances of the case require; or the court may make a further order or commitment. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-916 (Mar. 19, 1906, ch. 960, § 15, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596(300)).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Double jeopardy 1
Rehearing after dismissal 2
Jurisdiction 3

1. Double jeopardy

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

2. Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

3. Jurisdiction

Section 11-907 providing that when there is proper original jurisdiction, the Juvenile Court shall have continuing jurisdiction over children committed by it during their minority, and that the court from time to time upon petition of interested persons may modify or revoke its orders at any time, was intended to give that court continuing jurisdiction in all child commitment cases in which the court had original jurisdiction. *In the Matter of Cecelia Lem* (D.C. Mun. App. 1960, 164 A. 2d 345).

§ 16-2310. Appointment of guardian—Custody as between parents.

When in the course of a proceeding instituted pursuant to this subchapter it appears to the court that the welfare of a child will be promoted by the appointment of a relative or other suitable individual as guardian of its person, when the child is not committed to an institution or to the custody of an in-

corporated society, the court has jurisdiction to make the appointment either upon the application of the child or some relative or next friend or upon the court's own motion. The court may issue an order to show cause, which shall be served upon the parent or parents or custodian of the child in such manner and for such time prior to the hearing as the court deems reasonable. In a case arising pursuant to this subchapter, the court may also determine as between parents whether the father or the mother shall have the custody and control of the child. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–917 (Mar 19, 1906, ch. 960, § 16, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Changes are made in phraseology.

§ 16–2311. Protection of religious affiliations.

In placing a child under guardianship or custody other than that of its parent, the court, when practicable, shall select a person, or an institution or agency governed by persons, of like religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–918 (Mar. 19, 1906, ch. 960, § 17, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (601)).

Changes are made in phraseology.

§ 16–2312. Physical and mental examinations of children.

The court may cause a child coming under its jurisdiction to be examined by a physician, psychiatrist, or psychologist appointed by it. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–926 (Mar. 19, 1906, ch. 960, § 25, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596(602)).

Changes are made in phraseology.

CROSS REFERENCES

Services of a psychiatrist and psychologist, see § 24–106.

§ 16–2313. Place of detention of children.

(a) Except as provided by subsection (b) of this section, a child may not be placed in or committed to any prison, jail, or lockup, or be taken into custody, detained, or transferred from place to place, where he may be brought in contact or communication with an adult convicted of crime or under arrest and charged with crime.

(b) A child 16 years of age or older, whose habits or conduct are deemed such as to constitute a menace to other children, may, with the consent of a judge or Director of Social Work, be placed in a jail or other place of detention for adults, but in a room or ward separate from adults.

(c) The Board of Commissioners of the District of Columbia or its authorized representative shall make adequate provision for the temporary detention of children within its jurisdiction in a detention home or in boarding homes selected for the purpose. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–927 (Mar. 19, 1906, ch. 960, § 26, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, § 3(d), 76 Stat. 22).

Near the beginning of subsec. (a), "child" is substituted for "child under 18 years of age", as section 16–2301 herein defines "child" as meaning a person under 18 years of age.

The reference, "Board of Public Welfare of the District of Columbia", is changed to "Board of Commissioners of the District of Columbia or its authorized representative". See revision note under section 16–2306 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Term and place of detention

Where infant was committed for his minority to the National Training School for Boys and was subsequently paroled and arrested for a parole violation under a warrant to await a hearing before the Board of Parole to determine whether his parole should be revoked, the infant could not be detained in the District Jail where he was not detained under a warrant or indictment charging him with committing a crime at time when he was more than 18 years of age, and the infant must be discharged from custody unless transferred to the training school or an institution with substantially similar facilities pending outcome of the hearing. *Kautter* v. *Reid* (1960, 183 F. Supp. 352).

In view of this subchapter, U.S. Code title 18, § 4082, authorizing Attorney General to designate places of confinement limits his power in respect to juveniles to designating institutions where special facilities are provided for training and care. *White* v. *Reid* (1954, 125 F. Supp. 647).

Under this subchapter, the term of commitment, the nature of commitment, and place thereof, within statutory limitations, are all within exclusive jurisdiction of the juvenile court. *Huff* v. *O'Bryant* (1941, 121 F. 2d 890, 74 App. D.C. 19).

§ 16–2314. Applicability to adult cases—Offenses and penalties—Jury trial.

(a) All provisions of this subchapter relative to procedure in cases of children so far as practicable apply also to cases against adults arising under section 11–1511, 11–1554, 11–1555 or 11–1556, or any of the sections referred to in section 11–1557, with the consent of the defendant, or when not inconsistent with other provisions of law relating to the conduct of adult cases. Proceedings may be instituted upon complaint of an interested party or upon the court's own motion, and a reasonable opportunity to appear shall be afforded the respondent. The court may issue a summons, a warrant of arrest, or other process in order to secure or to compel the attendance of a necessary person.

(b) Whoever, by act or omission, willfully causes, encourages, or contributes to a condition which would bring a child within the provisions of section 11–1551 or tends to cause such a condition, is guilty of a misdemeanor, and shall be fined not more than $200 or imprisoned not more than one year, or both. Upon the trial, the court may impose such sentence as the law provides, or may suspend sentence and place on probation, and by order impose upon the adult such duty as is deemed to be for the best interests of the child or other persons concerned. If an adult is charged with an offense for which he is entitled to a trial by jury, he shall be so tried unless he expressly waives his right to jury trial. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–919 (Mar. 19, 1906, ch. 960, § 18, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (601)).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction 1
Proof of age 2
Purpose 3
Sufficiency of evidence 4
"Willful" 5

1. Construction

The section making it an offense to willfully cause, encourage or contribute to any condition which would bring a child within provisions of this subchapter relating to Juvenile Court and the section making this subchapter applicable to children engaged in described conduct or way of life must be read together. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 838).

2. Proof of age

In prosecution for willfully causing, encouraging and contributing to delinquency of female under age 18, the age of the female could be proved by her testimony and it was not required that there be documentary evidence of her age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

3. Purpose

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

4. Sufficiency of evidence

In prosecution for causing, encouraging and contributing to delinquency of minor female, evidence warranted finding that defendant willfully contributed to female's delinquency by deliberately carrying on an illicit and immoral relationship with female, irrespective of her real age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

5. "Willful"

In prosecution for willfully causing, encouraging and contributing to delinquency of minor female the court properly charged that the word "willful" meant more than voluntary and implied an evil mind or intent. *Slaughter* v. *District of Columbia* (D.C. Mun App. 1957, 134 A. 2d 338).

§ 16–2315. Finality of judgments.

Except as provided by sections 11–741(a)(3), 11–741(b), 17–305(a), 17–306 and 17–307(a), in all cases tried before the court pursuant to this subchapter, the judgment of the court is final. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–938 (Mar. 19, 1906, ch. 960, § 37, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

With respect to the exception, section 11–938 of D.C. Code, 1961 ed., referred to section 11–934 thereof. The latter section, which provided for appeals from judgments of the Juvenile Court to the United States Court of Appeals for the District of Columbia, and for the procedure thereon, was repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110. Since 1942, the Municipal Court of Appeals for the District of Columbia, the name of which, by the Act of Oct. 23, 1962, Pub. L. 87–873, 6, 76 Stat. 1172, was changed to the District of Columbia Court of Appeals, has had jurisdiction of appeals from judgments of the Juvenile Court. Therefore, in this revised section, reference to the sections providing for such appeals, and the procedure thereon, are substituted for the reference to section 11–934. See, also, Rules of the District of Columbia Court of Appeals.

Minor changes are made in phraseology.

§ 16–2316. Construction and purpose.

Sections 11–1551 to 11–1554, section 11–1583(a)(1) and (a)(3), section 11–1584, section 11–1586(a)—(d), and this subchapter shall be liberally construed so that, with respect to each child coming under the court's jurisdiction:

(1) the child shall receive such care and guidance, preferably in his own home, as will serve his welfare and the best interests of the District; and

(2) the child's family ties shall be conserved and strengthened whenever possible, and, except when his welfare or the safety and protection of the public can not be adequately safeguarded without his removal, he may not be removed from the custody of his parents; and

(3) when the child is removed from his own family, the court shall secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given him by his parents.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–902, 11–903 (Mar. 19, 1906, ch. 960, pream., as added June 1, 1938, ch. 309, 52 Stat. 596; Mar. 19, 1906, ch. 960, § 2, 34 Stat. 73, as amended June 1, 1938, ch. 309, 52 Stat. 596).

Section consolidates sections 11–902 and 11–903 of D.C. Code, 1961 ed.

"District" is substituted for "state", to correct an obvious error.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Adequate parental care 1
Construction 2
With other laws 3
Drug Users' Act not criminal statute 4
Legislative intent 5
Nature of procedings 6
Purpose 7
Rehabilitation 8
Rules of criminal procedure 9

1. Adequate parental care

A judgment of the juvenile court of the District of Columbia adjudging that a 15 year old girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her was inconsistent with constitutional principles concerning inherent right of parents to custody of their children and this subchapter, where evidence established that the girl's mother had given the girl continuous and devoted care which had resulted in a well developed, well educated, healthy child. *In re Stuart* (1940, 114 F. 2d 825, 72 App. D.C. 389).

"Adequate parental care," as used in this subchapter, means such care as is necessary to accomplish purpose thereof. *Id.*

2. Construction

This subchapter is not rendered ambiguous by use of the disjunctive and conjunctive in this section, and this chapter cannot be construed in the disjunctive throughout so as to authorize the court to remove a child from custody of its parents either when child's welfare requires such removal or when safety and protection of public demands it. *In re Stuart* (1940, 114 F. 2d 825, 72 App. D.C. 389).

Juvenile Court Act, this subchapter, should be construed liberally in favor of welfare of child. *In re John Lawrence Poff* (1955, 135 F. Supp. 224).

3. —— With other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

4. Drug Users' Act not criminal statute

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

5. Legislative intent

Legislative intent in enacting Juvenile Court Act, this subchapter, was to enlarge rather than diminish safeguards already possessed by juveniles. *In re John Lawrence Poff* (1955, 135 F. Supp. 224).

6. Nature of proceedings

Proceedings in juvenile court, even where petition is filed, are meant to be noncriminal and nonformal in nature. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

A hearing in the Juvenile Court is an adjudication upon status of child in nature of guardianship imposed by State as parens patriae to provide care and guidance that, under normal circumstances, would be furnished by natural parents. *In re John Lawrence Poff* (1955, 135 F. Supp. 224).

The purpose of juvenile delinquency proceedings in Juvenile Court is not to determine question of child's guilt or innocence of crime, but to promote child's welfare and state's best interests by strengthening family ties, where possible, and removing child from his parents' custody, when necessary for his welfare or safety or protection of public, securing for him custody, care, and protection as nearly as possible equivalent to that which should be given him by his parents. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

7. Purpose

Congressional intent in enacting provisions of this subchapter establishing juvenile court authorizing director of social work to investigate any complaint to determine whether interest of public or juvenile require further action was to encourage disposition of cases on social rather than on a legal basis. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

Purpose of Juvenile Court Act of District of Columbia, this subchapter, is promotion of child's welfare and state's best interest by strengthening of family ties where possible, and, when necessary, removing of child from custody of parents for his welfare or safety or protection of public, securing for his custody, care and protection as nearly as possible equivalent to that which should have been given him by his parents. *White* v. *Reid et al.* (1954, 126 F. Supp. 867).

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

8. Rehabilitation

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

9. Rules of Criminal Procedure

Rule of Criminal Procedure, U.S. Code, title 18, Appendix, under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

SUBCHAPTER II.—PATERNITY PROCEEDINGS

§ 16–2341. Definitions.

As used in this subchapter:

"Corporation Counsel" has the meaning prescribed by section 11–1583(b).

"Director of Public Health" means the Board of Commissioners of the District of Columbia or the officer or agency designated by the Board to have jurisdiction of, control, direct, and supervise, matters relating to public health and vital statistics in the District; and

"Metropolitan Police Department" means the Board of Commissioners of the District of Columbia or the agency designated by the Board to serve as the law enforcement agency for the District. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1.)

Revision Notes

Section is new, but does not make any new law.

Definition of "Corporation Counsel" is inserted. See section 11–1583(b), and revision note under section 11–1583.

Definitions of "Director of Public Health" and "Metropolitan Police Department" are inserted because of the reorganizational Plan No. 5, eff. July 1, 1952, 66 Stat. 824. That Plan abolished a number of offices and agencies in the District, including the Health Department and the Metropolitan Police Department, transferred their functions to the Board of Commissioners of the District of Columbia, and authorized the Board to create new offices and agencies and delegate functions thereto. The Board, after temporarily continuing, by Reorganization Order No. 1, July 1, 1952, the offices and agencies so abolished, including the Health Department and the Metropolitan Police Department, issued Reorganization Order No. 7, Sept. 16, 1952, which, by sections 1 and 3 thereof, abolished the office of Major and Superintendent of the Metropolitan Police Department and transferred the functions thereof to the Chief of Police, an office established by section 4(b) of the above-cited Presidential Reorganization Plan No. 5. Subsequently, the Board, by Reorganization Order No. 46, June 26, 1953, as amended by Orders of May 17, 1955 and Oct. 20, 1955 (eff. Dec. 1, 1955), and by Reorganization Order No. 56–214, Jan. 31, 1956, established a new Metropolitan Police Department, headed by the Chief of Police, transferred to that department the functions of the Metropolitan Police Department previously transferred to the Board by Presidential Reorganization Plan No. 5, referred to above, abolished the then existing Metropolitan Police Department, and repealed all previous orders of the Board in conflict therewith.

By Reorganization Order No. 57, June 30, 1953, as amended June 30, 1954, and as amended by Reorganization Orders Nos. 54–2546, Nov. 30, 1954; 56–1717, Aug. 23, 1956; 56–2541, Dec. 13, 1956, the Board created a new Department of Public Health, with a Director of Public Health at its head, transferred to that department the functions (which included those relating to vital statistics) of the former Health Department, abolished the then existing Health Department, and repealed all previous orders of the Board in conflict therewith.

However, under the above-mentioned Presidential Reorganization Plan No. 5, the ultimate responsibility to perform the functions transferred to the present Department of Public Health and the Metropolitan Police Department is in the Board of Commissioners, and the Board may change the present organization at any time. Therefore, the purpose of the definitions of "Director of Public Health" and "Metropolitan Police Department" in this section is to recognize this ultimate responsibility and to provide for changes in organization should they occur.

§ 16–2342. Party plaintiff—Information.

Proceedings pursuant to section 11–1555 and this subchapter shall be instituted in the Juvenile Court of the District of Columbia in the name of the District of Columbia, and prosecution upon information shall be by the Corporation Counsel for the District of Columbia or his assistants. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88 241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–951 (Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240).

Section is based on the second sentence of section 11–951 of D.C. Code, 1961 ed. For remainder of that section, see tables.

Minor changes are made in phraseology.

§ 16–2343. Time of bringing complaint.

Proceedings to establish paternity and provide for the support of a child born out of wedlock may be instituted after four months of pregnancy or within two years after the birth of the child, or within one year after the putative father has ceased making contributions for the support of the child. The time during which the defendant is absent from the jurisdiction shall be excluded from the computation of the time within which complaint may be filed. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–952 (Jan. 11, 1951, ch. 1225, § 4, 64 Stat. 1240).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Absence from jurisdiction 1
Accrual of claim 2
Construction 3
Evidence 4
Question of fact 5

1. Absence from jurisdiction

Where complainant and defendant in paternity action had been residents of Virginia and complainant moved to District of Columbia a few months before birth of child who was born within the District and defendant was a member of armed forces who came to District on military assignment 2½ years after birth of child, under provision of this section that time within which defendant should be absent from jurisdiction should be excluded from computation of the 2-year statute of limitations, statute of limitations was tolled as to defendant who had not previously been within the jurisdiction. *District of Columbia* v. *Franklin* (D.C. Mun. App. 1959, 154 A. 2d 550).

2. Accrual of claim

Where complainant was living in the District of Columbia at time child was born, cause of action under this subchapter had accrued as a fully matured claim in jurisdiction. *District of Columbia* v. *Franklin* (D.C. Mun. App. 1959, 154 A. 2d 550).

3. Construction

This subchapter conferring jurisdiction on Juvenile Court of District of Columbia of proceedings to establish paternity and provide for support of illegitimate child does not give such court jurisdiction to entertain a proceeding merely to determine paternity of such child. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

4. Evidence

In paternity suit in which support previously furnished by defendant was in issue, testimony of complaining witness that defendant paid for delivery of milk for several months was admissible over objection that best evidence rule required production of records of milk company. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

5. Question of fact

In paternity suit under this subchapter providing that proceedings must be brought within 2 years after child is born, or within one year after putative father ceases to contribute to support of child, whether putative father had made contributions to support of children within year prior to bringing of the action, was question for jury. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

§ 16–2344. Commencement of proceeding—Complaint.

An unmarried woman who is at least four months pregnant or who has been delivered of a child born out of wedlock, or a married woman who is at least four months pregnant with a child, which if born alive, may be born out of wedlock, or who has been delivered of a child born out of wedlock and who was not living with nor cohabiting with her husband during the period of time in which the child could have been conceived, may appear before the Corporation Counsel for the District of Columbia or his assistant at the Juvenile Court and accuse a man of being the father of her child and request his arrest. In case of death, disability, or incompetence of the mother, the complaint may be made by the custodian, guardian, or next friend of the child. The complainant shall be examined under oath by the Corporation Counsel or his assistant to determine the validity of the accusation. If, upon examination, there appears reasonable cause to believe that the accused person is the father of the child in question, the complaint shall be reduced to writing, verified by the complainant, and filed with the clerk of the court. The verified complaint may be introduced in evidence to impeach the complaining witness in any subsequent proceedings therein. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–953 (Jan. 11, 1951, ch. 1225, § 5, 64 Stat. 1240).

The references Corporation Counsel for the District of Columbia or his assistant at the Juvenile Court" and "Corporation Counsel or his assistant" are substituted for "Assistant Corporation Counsel at the juvenile court" and "Assistant Corporation Counsel", respectively, as more in conformity with Presidential Reorganization Plan No. 5, eff. July 1, 1952, and Reorganization Order No. 55–1029, June 6, 1955, as amended, of the Board of Commissioners. See, also, section 16–2341 herein, and revision note under section 11–1582 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence 1
Examination by assistant corporation counsel 2
Examination under oath 3
Maintenance of action by married woman 4
Motion for new trial 5
Nature of proceeding 5.50
Prejudicial error 6
Proof required 6.50
Waiver 7

1. Evidence

In bastardy proceeding, it was not error to permit complainant to testify that defendant had sexual relations with her prior to period of conception. *Moses* v. *District of Columbia* (D.C. Mun. App. 1957, 129 A. 2d 402).

In bastardy proceeding, evidence sustained jury's finding that defendant was the father of child born out of wedlock. *Id.*

The defendant is not entitled to examine the unsigned and unsworn statement made by the complainant to the Juvenile Court Clerk, since these affidavits are confidential and defendant has no absolute right to examine statements made in confidence to a prosecuting officer. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

2. Examination by assistant corporation counsel

This section requiring examination of mother of illegitimate child by assistant corporation counsel to determine validity of her accusation that a certain man is father of child is mandatory, and failure to comply, if properly and promptly called to attention of court, vitiates the entire proceeding. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

No information may be filed against any man accused by mother to be father of her child until mother is first examined under oath by an assistant corporation counsel to determine validity of accusation, and examination may not be made by some other employee of corporation counsel's office. *Id.*

3. Examination under oath

Statute requiring complainant to be examined under oath by assistant corporation counsel to determine validity of accusation that defendant is father of illegitimate

children was sufficiently complied with where assistant corporation counsel personally examined complainant, although exact details of interviews were lacking because of lapse of six years between filing of informations and trial, and counsel administered oath at end of interview rather than beginning. *District of Columbia* v. *R. L. Dade* (D.C. Mun. App. 1961, 173 A. 2d 545).

Where mother of illegitimate child was interviewed by corporation counsel's clerical employee, who prepared complaint naming defendant as father of child, and subsequently assistant corporation counsel asked woman her name, whether she was single or married, and if complaint was true, and woman then put up her hand and swore to it, perfunctory making of oath to complaint before assistant corporation counsel did not constitute an "examination under oath" as required by this section. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

4. Maintenance of action by married woman

A married woman who was not living with nor cohabiting with her husband during period of conception may maintain a bastardy action against the putative father. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

Complainant could maintain bastardy proceeding, where it appeared that she had had sexual relations only with defendant during the possible period of conception, irrespective of whether she was in fact divorced from her husband at the time. *Id.*

5. Motion for new trial

In proceeding to establish paternity and to provide for support of illegitimate child, wherein defendant's motion for new trial was based on affidavits that defendant was seen in other places than Brooklyn, New York, on the day of alleged act of intercourse and that defendant had left Washington with his mother on automobile trip on such day, denial of motion was not abuse of discretion under the circumstances. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

5.50. Nature of proceeding

Proceeding involving paternity determination was a civil action for support of child and procedure was neither criminal nor punitive in character. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

6. Prejudicial error

In proceeding to establish paternity and to provide for support of illegitimate child, where defendant offered sales slip to show that defendant purchased suit in Washington on date of alleged act of intercourse in Brooklyn, New York, even if ruling that slip was inadmissible for lack of identification was erroneous, the error was not prejudicial inasmuch as other records of the store showing the alleged purchase were subsequently admitted. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

6.50. Proof required

Proof necessary in proceedings in juvenile court for determination of paternity and support of child is still by a preponderance of evidence, not beyond reasonable doubt. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

7. Waiver

Where this section requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

§ 16–2345. Apprehension of accused.

Upon the filing of a complaint pursuant to section 16–2344, the case shall be calendared forthwith for preliminary hearing. The clerk of the court shall issue a summons requiring the accused to appear in court on a day certain for that purpose, or, if deemed necessary by the court, a warrant for the arrest of the defendant may be issued, directed to the United States marshal or the Chief of Police or any other member of the Metropolitan Police Department of the District of Columbia, requiring the accused to be arrested and brought before the court. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–954 (Jan. 11, 1951, ch. 1225, § 6, 64 Stat. 1241), and on Pres. Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 7, §§ 1, 3, Sept. 16, 1952.

"Chief of Police" is substituted for "Major and Superintendent" in conformity with section 4(b) of Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824, which established the office of Chief of Police, and Reorg. Ord. No. 7, §§ 1, 3, Sept. 16, 1952, of the Board of Commissioners, which abolished the office of Major and Superintendent of the Metropolitan Police Department, and transferred the functions thereof to the Chief of Police. See section 16–2341 herein, and revision note thereunder.

Changes are made in phraseology.

§ 16–2346. Bond—Commitment—Right to jury trial.

The court may require the person accused to enter into bond with surety in a sum not to exceed $2,500, guaranteeing his appearance on the date set for hearing or trial. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied toward the support of the child if so ordered by the court. If the defendant fails to post bond fixed by the court he shall forthwith be committed to the District Jail, there to remain until the date set for hearing, or until he enters into the required bond or otherwise is discharged by due process of law. In all prosecutions under this subchapter, the defendant is entitled to, but may waive, trial by jury. A final hearing may not take place until after the birth of the child. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–955 (Jan. 11, 1951, ch. 1225, § 7, 64 Stat. 1241).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Cross-examination 1
Evidence 2
Instructions 3
Plea of guilty without counsel 4
Right to counsel 5
Trial procedure 6
Verdict of jury 6.50
Voir dire examination 7

1. Cross-examination

In paternity proceeding, where complaining witness had previously denied having relations with second man or being out with him or entertaining him in home during conception period, trial court's refusal to allow question asking her when she was in home with second man did not constitute improper limitation of cross-examination of complaining witness. *Goodman* v. *District of Columbia* (D.C. Mun. App. 1952, 88 A. 2d 319).

2. Evidence

In District of Columbia, child should not be exhibited to jury in illegitimacy case for purpose of establishing resemblance unless there appear in child physical characteristics peculiar to father and unless resemblance is so striking as to leave no reasonable doubt as to its existence, and likewise child should not be exhibited unofficially to jurors or some of them outside the courtroom. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

3. Instructions

In bastardy proceeding, it was proper for the trial judge to explain to the jury, on its voir dire examination, the history and purpose of the legislation under which the proceeding was instituted. *Moses* v. *District of Columbia* (D.C. Mun. App. 1957, 129 A. 2d 402).

In bastardy proceeding, charge was in strict accordance with the settled law of the jurisdiction. *Id.*

In paternity suit, failure of trial judge to instruct jury concerning defendant's failure to take stand was not error, in absence of request for such instruction by defense counsel. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

4. Plea of guilty without counsel

Where defendant probably understood that he was charged with paternity of child born out of wedlock and that his acknowledgment of the charge would result in his being ordered to pay something for support of the child but it was not clear that defendant was informed or understood that such payments would have to be made for 16 years and that he could be sent to jail for a year whenever he defaulted in payment, defendant's guilty plea, entered when he was not represented by counsel, would be set aside and he would be permitted to plead not guilty. *Huffman* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 144).

5. Right to counsel

Where defendant was without counsel only at his arraignment and preliminary hearing, and he pleaded not guilty and was represented by counsel at his trial, he was not deprived of any substantial rights, because the trial court refused to grant a second preliminary hearing because the defendant was not represented by counsel at the original hearing. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

Where 18 year old defendant in illegitimacy proceeding was asked, at preliminary hearing, if he wanted to get a lawyer before answering, and defendant replied that he did not, and, together with his mother, signed a waiver of right to counsel, but on day of trial no inquiry was made as to whether defendant desired attorney to represent him at that time, nor was he advised that he could have an attorney assigned to him if without funds to retain one, and where judge never inquired as to defendant's education or familiarity with court proceedings, and charge against defendant was never explained to him in any detail, nor was defendant told the penalties that would attach if he were found to be the father of the child, defendant was not fully advised of his right to counsel and his motion for new trial should have been granted. *Johnson* v. *District of Columbia* (D.C. Mun. App. 1953, 101 A. 2d 251).

6. Trial procedure

In child support proceeding, putative father had right to make reasonable inquiry as to whether complaining witness had made charge against defendant at insistence of board of public welfare where she had sought financial assistance. *Ford* v. *District of Columbia* (D.C. Mun. App. 1953, 96 A. 2d 277).

6.50. Verdict of jury

Verdict of jury that defendant was father of child born out of wedlock was supported by evidence. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

Fact that jury chose to believe mother instead of putative father in trial to determine paternity and for support of child furnished no basis for reversal of judgment. *Id.*

7. Voir dire examination

Where defendant was charged with being father of an illegitimate child, action of the trial court in explaining the history and purpose of this subchapter to the jury on a voir dire examination was proper. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

§ 16–2347. Blood tests.

When it is relevant to the prosecution or defense of an illegitimacy action, the court may direct that the mother, child, and the defendant submit to one or more blood tests to determine whether or not the defendant can be excluded as being the father of the child, but the results of the test may be admitted as evidence only in cases where the defendant does not object to its admissibility. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–956 (Jan. 11, 1951, ch. 1225, § 8, 64 Stat. 1241).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Blood tests

Blood grouping tests showing that husband was excluded as father of child born to his wife were conclusive of nonpaternity. *Retzer, Jr.* v. *Retzer* (D.C. Mun. App. 1960, 161 A. 2d 469).

Where putative father made no request in bastardy proceeding for tests of himself, mother, and illegitimate child, until after trial and finding that putative father was the father of the illegitimate child, court did not abuse its discretion in denying the motion for the blood tests. *Adams* v. *District of Columbia* (D.C. Mun. App. 1954, 109 A. 2d 141).

In a bastardy proceeding, court has authority, in its discretion, to order blood tests for putative father, mother, and illegitimate child. *Id.*

§ 16–2348. Exclusion of public.

Upon the trial of proceedings pursuant to this subchapter, the court may exclude the general public, and shall do so at the request of either party. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–957 (Jan. 11, 1951, ch. 1225, § 9, 64 Stat. 1241).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Time for request

Under this section providing that upon trial of proceedings to adjudge person to be father of child born out of wedlock the Court may exclude the general public and shall do so at the request of either party, there is no requirement that request must be made at outset of trial or be waived. *Hassler* v. *District of Columbia* (1956, 238 F. 2d 264, 99 U.S. App. D.C. 188).

In proceeding to adjudge defendant to be the father of a child born out of wedlock, trial court committed error in denying motion to exclude newspaper people from courtroom after counsel made such motion when during presentation of defense he observed reporter in courtroom. *Id.*

Demand to have public excluded from a bastardy proceeding must be made at the appropriate time. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

Request by defendant in bastardy case, made after prosecution had concluded its case and after defense counsel had made opening statement and had called two witnesses, that public be excluded, was untimely. *Id.*

§ 16–2349. Judgment.

(a) *Prenatal and Confinement Expenses; Maintenance.*—When the defendant in a proceeding pursuant to this subchapter, in open court acknowledges the paternity of a child born out of wedlock, or when, at the trial the finding of the court or jury is against the defendant, the court, in rendering judgment, may enter an order for the payment of the prenatal medical care and costs of the mother's confinement and expenses of childbirth in such amount or amounts as it deems reasonable, commensurate with defendant's ability to pay. The court may also order payments for the maintenance and education of the child, commensurate with defendant's ability to pay, to be made at such periods or intervals as the court directs. The court may order

payments to be made by the defendant at a precinct of the Metropolitan Police Department of the District of Columbia. Payments shall continue until the child reaches the age of 16 years, unless, prior thereto, the child is legally adopted.

(b) *Petition for Modification of Judgment; Hearing.*—From time to time, the court, after a hearing, may change or modify its order directing the amount that defendant shall pay for the maintenance and support of the child. The hearing shall be held not less than ten days following notice in writing by the clerk of the court to the parties in interest, mailed to or left at their last known place of residence.

(c) *Death of Child.*—If a child dies before reaching the age of 16 years, the court upon proof thereof, may order the payment of reasonable funeral expenses, and shall terminate the order for maintenance. Arrears that may be owing at the time of death may be canceled. (Dec. 23, 1963, 77 Stat. 593, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-958 (Jan. 11, 1951, ch. 1225, § 10, 64 Stat. 1241).

Words "in its discretion" and "in the discretion of the court", are omitted from subsec. (a) and subsec. (c) as surplusage. Any abuse of discretion would render the court's action subject to reversal.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof .50
Docket entry 1
Expert testimony 1.50
Evidence 2
Instructions 2.50
Judgment 3
Order to support 4
Paternity, issue for trier of facts 4.50
Proof required by prosecution 5
Review 6
Waiver 7

.50. Burden of proof

Burden was on government in paternity proceeding to prove by preponderance of the evidence that defendant was father of children born out of wedlock. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

1. Docket entry

Docket entry, in proceeding to establish paternity of an illegitimate child and to compel father to provide support, which read "Pts. and atty for deft. pres. Deft. adjudged G.", was sufficiently clear to show that defendant had been found to be the father of complainant's child, especially when defendant's counsel had admitted on oral argument that he clearly understood what the entry meant, but better practice would be for trial court to adopt form of finding or verdict adjudging defendant to be father or not father of child in question, in view of fact that proceeding is not criminal in nature. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

1.50. Expert testimony

Proffered expert testimony as to results of tests which had excluded defendant as father of one of three children born out of wedlock to mother who at first charged defendant with being the father of the three children but later successfully sought support from him for only two of the children was admissible as affecting her credibility though not as probative on paternity, and exclusion of the evidence was prejudicial to the defendant. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

2. Evidence

In bastardy proceeding, in view that the determination of paternity and the support of a child are essentially civil proceedings although denominated quasi-criminal in their over-all nature, the court erred in requiring proof beyond a reasonable doubt but paternity could be proved by a preponderance of evidence. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

In view of fact that this subchapter relating to a proceeding to establish paternity of an illegitimate child and to require father to provide for child's support, include no requirement that there be corroboration of mother's testimony in order to establish a finding of paternity, a defendant could be found to be the father of an illegitimate child, and the fact of birth could be established, by the uncorroborated testimony of the mother, where such testimony was credible, sufficiently clear and convincing. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

2.50. Instructions

In paternity proceeding involving more than one child, jury should be instructed that paternity as to each child must be found separately and that jurors may find from all the evidence that defendant is the father of one although not the other. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

3. Judgment

Although the burden is on the government to prove all material allegations in information in a proceeding to establish paternity and to require father to provide for support of an illegitimate child, fact that government did not prove that the name of an illegitimate child was as charged in the information, or that the child was a male, did not invalidate judgment requiring defendant, as the child's father, to contribute to the child's support. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Judgment entered in Juvenile Court of District of Columbia against defendant charged with being father of illegitimate child and subsequent order of support together constituted the final and appealable judgment, and hence appeal which was timely with respect to order was timely with respect to the final and appealable judgment. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

4. Order to support

Before Juvenile Court of District of Columbia can order man to support child either man must acknowledge his paternity or there must be an adjudication of paternity. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

4.50. Paternity, issue for trier of facts

Where there is direct conflict in evidence, question whether defendant is father of minor children born out of wedlock is for trier of facts, not the court. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

5. Proof required by prosecution

Prosecution in bastardy case was not required to prove that child was born alive or was alive at time of trial. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

6. Review

In proceeding charging the defendant with being the father of a child born to complainant, an unmarried woman, government's evidence made out a prima facie case. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

Evidence supported finding that defendant was father of child born out of wedlock. *Stone* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 841).

The Municipal Court of Appeals is bound by rule that where there is substantial evidence to support a finding it has no right to reverse. *Id.*

Municipal Court of Appeals cannot decide appeals on basis of facts stated in brief unless such facts also appear in records brought up from trial court. *Id.*

Even though a proceeding to provide for support of an illegitimate child is regarded as quasi criminal in nature, failure of proof of immaterial allegations in the information does not require a reversal, especially when such points were not raised at trial. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

7. Waiver

Where section 11–953 requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

§ 16–2350. Support payments.

(a) *Security; Probation; Committment for Default.*—The court may require a defendant, against whom a judgment is rendered pursuant to this subchapter, to give security not to exceed $2,500 guaranteeing payments ordered by the court, or may suspend the requirement of security and place the defendant on probation to the court on condition that payments be made as ordered. In default of a payment as ordered, the court may revoke probation and commit the defendant to jail for a period of not more than one year at any one time. At the expiration of a term of commitment, the court may discharge the defendant, but his liability to make subsequent payments or any payments in arrears at the time of commitment in accordance with the judgment or for commitment for further default is not thereby affected. In lieu of commitment or as a condition of his release from jail, the court may set aside commitment and again place the defendant on probation upon such terms as it directs. The amount of security, if forfeited, shall be disbursed as the court directs.

(b) *Judgment for Arrears; Execution.*—If there is a default of payments as ordered, the court, after notice by registered mail to the defendant at his last-known address, and after hearing, may reduce the amount of arrears to judgment. The court, after the notice and hearing, may reduce to judgment the arrears under any order hereafter entered for the support and maintenance of a child born out of wedlock, or any amounts ordered to be paid by the defendant under this subchapter. When the judgment is docketed in the clerk's office of the United States District Court for the District of Columbia, it has the same force and effect as judgments of that court, and execution thereon may be effected in the same manner as upon judgments of that court. (Dec. 23, 1963, 77 Stat. 593, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–959 (Jan. 11, 1951, ch. 1225, § 11, 64 Stat. 1242).

All references to "discretion" of the court are omitted as surplusage. See revision note under section 16–2349.

In third sentence of subsec. (a), words "at time of commitment" are inserted after "arrears" on recommendation of the Judge of the Juvenile Court.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion 1
Corroboration 2
Jurisdiction 3
Rights of probationer 4

1. Abuse of discretion

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or willful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 147).

2. Corroboration

In bastardy proceeding, there is no requirement of corroboration of the prosecutrix where there is no statute requiring it and the defendant may be found to be the father on the uncorroborated testimony of the mother where such evidence is credible, sufficiently clear and convincing. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

3. Jurisdiction

"Children," within statute providing that Domestic Relations Branch of Municipal Court shall have exclusive jurisdiction over actions to enforce support of minor children, includes illegitimate children and Domestic Relations Branch had jurisdiction of action to enforce order directing him to support minor children born out of wedlock, where natural father had acknowledged paternity. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

4. Rights of probationer

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by this subchapter and, apart from this subchapter, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 147).

§ 16–2351. Voluntary agreement for support—Approval—Order of court—Exlusion of other remedies.

The putative father of a child born out of wedlock may enter into an agreement with the mother of the child, or with another person on behalf of the child, for the support and maintenance of the child, and the agreement may be submitted to the court for ratification and approval. Upon ratification and approval, the court shall issue an order incorporating the terms thereof, and payments thereunder may be received and disbursed by the court in the same manner as provided by section 16–2381. The faithful performance under the terms of the agreement bars other remedies of the mother or any other person on behalf of the child for the support of the child, subject to section 16–2349(b). (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–960 (Jan. 11, 1951, ch. 1225, § 12, 64 Stat. 1242).

Changes are made in phraseology. See additional changes in text.

NOTES TO DECISIONS UNDER PRIOR LAW

Civil remedies 1
Consideration 2
Duress 3
Offer of settlement 4
Proper parties 5
Public policy 6
Ratification 7

1. Civil remedies

Where natural father acknowledges paternity, illegitimate children are entitled to civil remedies for support available in Domestic Relations Branch of Court of General Sessions, though they retain all remedies presently available to them in Juvenile Court. *C. Johnson* v. *E. Johnson et al.* (1963, 324 F. 2d 884, 117 U.S. App. D.C. 6).

2. Consideration

A mother's agreement not to assert her statutory right of action against her illegitimate child's putative father for child's maintenance constituted sufficient "consideration" for putative father's contract to pay mother weekly sum for child's support. *Williams* v. *Amann* (1943, 33 A. 2d 633).

3. Duress

An illegitimate child's putative father's contract to pay mother weekly sum for child's support was not "void," but only "voidable," for duress, though signed by him in order to continue as student at university and obtain degree, as duress, if any, was mental only and when it ceased to exist, it was incumbent on him to repudiate contract or let it stand as valid subsisting agreement. *Williams* v. *Amann* (1943, 33 A. 2d 633).

4. Offer of settlement

Defendant's unaccepted offer to pay in order to settle, prefaced by absolute denial of liability, was not a voluntary acknowledgment of paternity of child, and hence this section providing for ratification and approval by Juvenile Court of District of Columbia of agreement for support and maintenance of child by father voluntarily acknowledging paternity was inapplicable to lift offer out of rule against admissibility of offer of compromise. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

5. Proper parties

An illegitimate child's mother is "proper plaintiff" in suit on putative father's contract to pay mother weekly sum for child's support. *Williams* v. *Amann* (1943, 33 A. 2d 633).

6. Public policy

An illegitimate child's putative father's contract to pay mother weekly sum for child's support in consideration of mother's agreement not to assert her statutory right of action for child's maintenance is not void under rule of "public policy" condemning contracts grounded on promises to withhold commencement or prosecution of proceedings for criminal offenses. *Williams* v. *Amann* (1943, 33 A. 2d 633).

7. Ratification

An illegitimate child's putative father's continuance of payments under contract with mother for child's support until after expiration of statutory time for mother's institution of action to determine child's parentage and fix father's responsibility for child's support constituted "ratification" of contract by putative father, so as to preclude him from maintaining defense of duress in mother's subsequent action for amount of overdue payments. *Williams* v. *Amann* (1943, 33 A. 2d 633).

§ 16–2352. Death of defendant—Liability of estate.

If the defendant dies after paternity has been established and prior to the time the child reaches the age of 16 years, any sums due and unpaid under an order of the court at the time of his death constitute a valid claim against his estate. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–962 (Jan. 11, 1951, ch. 1225, § 14, 64 Stat. 1243).

Changes are made in phraseology.

§ 16–2353. New birth record upon marriage of natural parents.

When a certified copy of a marriage certificate is submitted to the Director of Public Health, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child and the paternity of the child has been judicially determined or acknowledged by the husband before the Commissioners or their designated agent, or has been acknowledged in an affidavit sworn to by the husband before a judge or the clerk of a court of record, or before an officer of the Armed Forces of the United States authorized to administer oaths, or before a person authorized to administer oaths, and the affidavit is delivered to the Commissioners or their designated agent, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal, and opened for inspection only upon order of the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–963 (Jan. 11, 1951, ch. 1225, § 15, 64 Stat. 1243; Apr. 23, 1958, Pub. L. 85–382, § 1, 72 Stat. 97).

"Director of Public Health" is substituted for "Commissioners of the District of Columbia or their designated agent". See section 16–2341 herein and revision note thereunder.

Minor changes are made in phraseology.

§ 16–2354. Reports to Director of Public Health.

(a) Upon entry of a final judgment determining the paternity of a child born out of wedlock, the clerk of the court shall forward a certificate to the Director of Public Health, or his authorized representative in the jurisdiction in which the child was born, giving the name of the person adjudged to be the father of the child.

(b) Upon receipt of the certificate provided by subsection (a) of this section, the Director of Public Health or his authorized representative shall file it with the original birth record, and thereafter may issue a certificate of birth registration including thereon the name of the person adjudged to be the father of the child. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–964 (Jan. 11, 1961, ch. 1225, § 16, 64 Stat. 1243; Apr. 23, 1958, Pub. L. 85–382, § 2, 72 Stat. 97).

Words "Director of Public Health, or his authorized representative in the jurisdiction" are substituted for "bureau of vital statistics of the jurisdiction", and "Director of Public Health or his authorized representative" is substituted for "Commissioners of the District of Columbia or their designated agent". See section 16–2341 herein and revision note thereunder.

Minor changes are made in phraseology.

§ 16–2355. Applicability of sections relating to desertion or nonsupport.

The provisions of sections 22–903 to 22–905, making it a misdemeanor to abandon or willfully neglect to provide for the support and maintenance of minor children in destitute or necessitous circumstances, and providing the proceedings and punishment therefor, also apply to a person who abandons or fails to support his illegitimate child when paternity has been established judicially or when paternity has been directly acknowledged by the putative father under oath, or indirectly acknowledged by voluntarily making contributions to the support of the child. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–961 (Jan. 11, 1951, ch. 1255, § 13, 64 Stat. 1242).

Section is based on subsec. (b) of section 11–961 of D.C. Code, 1961 ed. Remainder of section 11–961 is carried into sections 11–1556 and 16–2381.

Section "22–905" is substituted for "22–906", to correct a typographical error. Section 13 of act Jan. 11, 1951, ch. 1255, 64 Stat. 1242, from which section 11–961 of D.C. Code, 1961 ed., was derived, refers only to act Mar. 23, 1906, ch. 1131, 34 Stat. 86, as amended, which is classified to sections 22–903 to 22–905 of D.C. Code, 1961 ed. Section 22–906 is from an act of 1910 (May 18, 1910, ch. 248, 36 Stat. 403), and relates to deposits by the clerk of the Juvenile Court of all moneys paid by order of the court under sections 22–903 to 22–905 that are collected and disbursed by the clerk. It seems unnecessary to include section 22–906 in the reference in this section.

Words, "and providing the proceedings and punishment therefor," are inserted for the purpose of completeness.

Minor changes are made in phraseology.

§ 16–2356. Construction.

Section 11–1555, section 11–1583(a)(2), section 11–1586(e), and this subchapter shall be so interpreted as to effectuate the protection and welfare of the child involved in any proceedings thereunder. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–966 (Jan. 11, 1951, ch. 1225, § 18, 64 Stat. 1243).

The provision that authorized appropriations to carry out the purposes of the sections cited in section 11–966 of D.C. Code, 1961 ed., is omitted as covered in a separate section of the bill to enact this revision.

The citation of sections 11–951 to 11–967 of D.C. Code, 1961 ed., is changed to refer to this subchapter and other sections in this revised part in which the pertinent provisions of sections 11–951 to 11–967 are carried.

A minor change is made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Nature of proceeding

A proceeding in Juvenile Court of District of Columbia to establish paternity and provide for support of illegitimate child is not criminal proceeding intended to punish father but ultimate object of proceeding is to provide support for child. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 16–2381. Payments for support and maintenance under section 22–903 to 22–905—Voluntary payments—Disbursement.

(a) In all cases arising pursuant to sections 22–903 to 22–905, that, pursuant to section 11–1556, are brought in the Juvenile Court of the District of Columbia, the court may order payments to be made by the defendant, including a defendant to which section 16–2355 relates, at a precinct of the Metropolitan Police Department of the District of Columbia. As used in this subsection, "Metropolitan Police Department" has the same meaning as that prescribed in section 16–2341.

(b) The Juvenile Court may accept voluntary payments for the support and maintenance of wife or minor children and disburse the moneys to the persons for whom the contributions are paid, in the same manner as the payments are accepted and disbursed pursuant to sections 22–903 to 22–905. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–961 (Jan. 11, 1951 ch. 1225, § 13, 64 Stat. 1242).

Section is based on part of subsec. (a) and all of subsec. (c), of section 11–961 of D.C. Code, 1961 ed. The provision of subsec. (a) of section 11–961 vesting jurisdiction in the Juvenile Court, concurrently with the District Court, of cases arising under sections 22–903 et seq., of the Code, relating to desertion and nonsupport, is carried into section 11–1566 herein. Subsec. (b) of section 11–961 is carried into section 16–2355 herein.

As some of the provisions of section 11–961 of D.C. Code 1961 ed., are, as stated above, carried into sections 11–1556 and 16–2355 herein, words "which, under section 11–1556, are brought in the Juvenile Court of the District of Columbia," are inserted near the beginning of subsec. (a), and words ", including a defendant to which section 16–2355 relates," are inserted after "defendant" in that subsection, for the purpose of clarification and completeness.

The second sentence of subsec. (a) providing that, as used in that subsection, "Metropolitan Police Department" has the same meaning as that prescribed in section 16–2341, is inserted for the same reason as stated in the revision note under section 16–2341.

The citation to section "22–906" of the Code, is changed to section "22–905" to correct a typographical error. See revision note under section 16–2355 herein.

Words ", in its discretion,", which, in the provisions carried into subsec. (a), followed "the court" and preceded "may order", are omitted as surplusage. See revision note under section 16–2349.

Changes are made in phraseology.

§ 16–2382. Jury.

The jury for service in the Juvenile Court shall consist of twelve persons. (Dec. 23, 1963, 77 Stat. 595, Pub. L–88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–936 (Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Section is based on the first clause of section 11–936 of D.C. Code, 1961 ed. For remainder of section 11–936, see tables.

§ 16–2383. Suspension of imposition or execution of sentence.

In all cases in the Juvenile Court, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, it if appears to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation as provided by section 16–2314, 22–903, or 31–207, as the case may be. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–942a (June 18, 1953, ch. 128, § 1, 67 Stat. 65).

The provisions from which section 11–942a of D.C. Code, 1961 ed., was derived (the above-cited section 1 of act June 18, 1953) were also set out in that Code as section 11–757 thereof because they referred, not only to the Juvenile Court, but also to the Municipal Court, now the Court of General Sessions. In this section, the provisions relating to the Court of General Sessions are omitted, as they are set out in section 16–710 herein.

Changes are made in phraseology.

Cross Reference

Probation and suspension of sentences in United States District Court, see U.S. Code, Title 18, § 3651.

§ 16–2384. Fees prohibited.

A fee may not be charged for any service rendered by the clerk of the Juvenile Court or by any officer of the court. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–935 (Mar. 19, 1906, ch. 960, § 34, as added June 1, 1938, ch. 309, 52 Stat. 596(604)).

Minor changes are made in phraseology.

Chapter 25.—CHANGE OF NAME

Sec.
16–2501. Application—Persons who may file.
16–2502. Notice—Contents.
16–2503. Decree.

§ 16–2501. Application—Persons who may file.

Whoever, being a resident of the District and desiring a change of name, may file an application in the United States District Court for the District of Columbia setting forth the reasons therefor and also the name desired to be assumed. If the applicant is an infant, the application shall be filed by his parent, guardian, or next friend. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1101 (Mar. 3, 1901, ch. 854 § 1298, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Words "holding an equity term", which followed the reference to the District Court, are omitted as obsolete. See revision note under section 11–502 herein.

The third (final) sentence of section 16–1101 of D.C. Code, 1961 ed., read as follows: "The Court shall have power, in its discretion, to grant the prayer of such petition". This sentence is omitted as covered by section 16–2503 herein.

Reference to "petition" are changed to "application", as the latter term is perhaps more in consonance with the Federal Rules of Civil Procedure. There is nothing in those rules indicating that they do not apply to change of name proceedings in the District Court in the District of Columbia. This type of proceeding is not listed in rule 81(a) among the proceedings in that court to which the rules do not apply.

Changes are made in phraseology.

CROSS REFERENCE

Change of name upon adoption, see § 16–312.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Not applicable to corporations

Sections 16–1101 to 16–1103 do not apply to corporations. *American Elementary Elec. Co.* v. *Normandy* (46 App. D.C. 329).

§ 16–2502. Notice—Contents.

Prior to a hearing pursuant to this chapter, notice of the filing of the application, containing the substance and prayer thereof, shall be published once a week for three consecutive weeks in a newspaper in general circulation published in the District. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1102 (Mar. 3, 1901, ch. 854, § 1299, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543).

Word "application" is substituted for "petition". See revision note under section 16–2501 herein.

Changes are made in phraseology.

§ 16–2503. Decree.

On proof of the notice prescribed by section 16–2502, and upon a showing that the court deems satisfactory, the court may change the name of the applicant according to the prayer of the application. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1103 (Mar. 3, 1901, ch. 854; § 1300, 31 Stat. 1394; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991, May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Words "or the judge holding an equity term thereof", which followed "court", are omitted as obsolete. See revision note under section 11–502 herein.

Word "application" is substituted for "petition". See revision note under section 16–2501 herein.

Changes are made in phraseology.

Chapter 27.—NEGLIGENCE CAUSING DEATH

Sec.
16–2701. Liability—Damages—Prior recovery as precluding action.
16–2702. Party plaintiff—Statute of limitations.
16–2703. Distribution of damages.

§ 16–2701. Liability—Damages—Prior recovery as precluding action.

When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is a married woman, entitle her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the United States Court of Appeals for the District of Columbia Circuit, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1201 (Mar. 3, 1901, ch. 854, § 1301, 31 Stat. 1394; June 19, 1948, ch. 507, § 1, 62 Stat. 487).

Word "judge" is substituted for "justice". See sections 88, 132, and 133 of Title 28, United States Code, and act June 25, 1948, ch, 646, § 32(a), 62 Stat. 991, as amended by act May 24, 1949, ch. 139. § 127, 63 Stat. 107.

Changes are made in phraseology.

CROSS REFERENCES

Abatement and revivor in general, see § 12–101 et seq.

Liability for death of employee under Longshoremen's and Harbor Workers' Compensation Act, see §§ 36–501, 36–502.

Liability of common carrier for death of employee, Employers' Liability Act, see § 44–401 et seq.

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1. Decisions under prior law

Under act of February 17, 1885 (23 Stat. 307), see *McGraw* v. *District of Columbia* (3 App. D.C. 405, 25 L.R.A. 691).

In action for wrongful death under act of Congress of February 17, 1885 (23 Stat. 307), it was not necessary for the plaintiff to allege special pecuniary loss due to death of the deceased. *District of Columbia* v. *Wilcox* (4 App. D.C. 90).

Under act of Congress of February 17, 1885 (23 Stat. 307), an administrator may sue for killing of his intestate whether the intestate left goods and chattels or not. *Washington Asphalt Block & Tile Co.* v. *Mackey* (15 App. D.C. 410).

2. Abuse of discretion

In action for wrongful death, record disclosed District Court did not abuse its discretion in denying application of plaintiffs for additional time to qualify as personal representatives within meaning of wrongful death statute. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

3. Amendment of complaint

Where an act of negligence causing death gives rise simultaneously to two separate and independent claims, one under the Wrongful Death Act, §§ 16–1201 to 16–1203, and the other under the Survival Act, § 12–101 et seq the District Court erred in denying plaintiff's motion to amend her complaint to include a demand for damages under the Survival Act over and above the initial demand under the Wrongful Death Act on the ground that the remedies were mutually exclusive. *Sornberger, Executrix, etc.* v. *District Dental Laboratory Inc. et ano.* (1959, 266 F. 2d 694, 105 U.S. App. D.C. 290).

In administrator's action to recover for death of decedent and to recover for decedent's injuries sustained and loss of potential earning capacity, administrator would be allowed to amend complaint to increase damages claimed from $46,500 to $71,500. *Mitchell* v. *Gundlach* (1956, 136 F. Supp. 169).

4. Beneficiaries

Action for wrongful death caused by negligence in Maryland can be maintained in District of Columbia court for the benefit of the persons designated in the statute of Maryland. *Stewart* v. *Baltimore & O. R. Co.* (1897, 18 S. Ct. 105, 168 U.S. 445, 42 L. Ed. 537).

Fact that the deceased had his domicile in Virginia, and that he had no estate here, at the time of his death are not conclusive against the right to obtain letters of administration in District of Columbia. *Western Union Tel. Co.* v. *Lipscomb* (22 App. D.C. 104).

If the action cannot be maintained by the personal representative of the intestate for the ultimate benefit of the father, who is next of kin, and alone has been shown to have sustained any injury by the death of the son, the judgment ought to be arrested, for the remedy goes no further. *United States Elec. Lighting Co.* v. *Sullivan* (22 App. D.C. 115).

Action is maintainable for benefit of illegitimate brother of the half blood of the decedent, a woman. *Southern R. Co.* v. *Hawkins* (35 App. D.C. 313, 21 Ann. Cas. 926).

Necessity for declaration to allege existence of beneficiaries, and right to amend a declaration failing so to allege. *Neubeck* v. *Lynch* (37 App. D.C. 576, 37 L.R.A., N.S., 813).

A husband, as administrator, has a proper action for death of wife, within meaning of the words "next of kin." *Calvert* v. *Terminal Taxicab Co.* (48 App. D.C. 119).

5. Burden of proof

In wrongful death action by pedestrian's administratrix against motorist whose automobile struck pedestrian, administratrix had burden of proving that motorist should have seen pedestrian in time to avoid accident. *Skinner* v. *Koontz* (C.A.D.C. 1960, 284 F. 2d 207).

Executor of estate of passenger who sustained fatal injuries in fall through open vestibule doors on fast moving train had, as part of his burden of proof, in action against railroad, obligation, as element in showing negligence of railroad in failing to inspect vestibule doors to see to it that they remained closed, to introduce sufficient evidence to permit conclusion that there was opportunity for further inspections than those made. *Pennsylvania R.R. Co.* v. *Pomeroy* (1956, 239 F. 2d 435, 99 U.S. App. D.C. 272, certiorari denied 77 S. Ct. 861, 353, U.S. 950, 1 L. Ed. 2d 859).

A passenger or his representative has the burden, if he is to succeed in a suit for negligence against a railroad, of producing sufficient evidence to warrant inferences required to support verdict in his favor; plaintiff, who relies on an alleged act of specific negligence, is not relieved of burden of making prima facie proof of that act, nor is jury free to make any guess or conjecture it likes, without any evidentiary basis therefor. *Id.*

6. Change of venue

Under U.S. Code, title 28, § 1404(a), providing for change of venue for convenience of parties and witnesses in interest of justice to other district or division where action might have been brought, United States District Court for District of Maryland could not transfer case to District of Columbia by administrator who was resident of District of Columbia, brought under section 12–101 et seq., and 16–1201 to 16–1203, against single defendant who was Maryland resident, and who was not amenable to personal service in district and who would not consent to transfer. *Mitchell* v. *Gundlach* (1956, 136 F. Supp. 169).

In District of Columbia's administrator's action against individual defendant who was resident of Maryland, based on injury sustained by decedent allegedly due to defective commodity manufactured and sold by defendant, evidence on interest of justice did not require that venue be transferred from Baltimore, Maryland, to Washington, D.C. *Id.*

7. Concurring negligence

In action for taxicab passenger's wrongful death sustained in intersection collision with streetcar, evidence sustained implied findings that streetcar had entered intersection against traffic light and that taxi driver had failed to slow down so that death was caused by concurring negligence. *Coleman* v. *Moore et al.* (1952, 108 F. Supp 425).

8. Construction

There is only one cause of action for wrongful death and it arises under sections 16–1201—16–1203 of this title. *Webster* v. *Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D.C. 171, 143 A.L.R. 280, certiorari denied 63 S. Ct. 261, 317 U.S. 689, 87 L. Ed. 552).

Congress did not, by enactment of wrongful death statute (§§ 16–1201 to 16–1203) and compensation act (U.S. Code, title 33, § 901 et seq.) applicable to District of Columbia, intend to create two separate and independent causes of action for wrongful death, and there was no intention to allow a widow of an injured employee to recover from the employer under both acts. *Ciarricchi* v. *James Kane Co. et al.* (1953, 116 F. Supp. 848).

Statute is remedial and as such must be liberally construed. *Calvert* v. *Terminal Taxicab Co.* (48 App. D.C. 119).

9. —— With other laws

Plaintiff, who recovered against one joint tort-feasor under the Virginia Wrongful Death Act, and in a separate action against another tort-feasor under the District of Columbia Wrongful Death Act, was not entitled to recover against the joint tort-feasors collectively an amount greater than the amount of the larger judgment, the judgment against party responsible under the District of Columbia Act, since loss of consortium and solatium, recovery for which was allowable only under the Virginia Act, was not considered in computing damages so that judgments against both tort-feasors were for the same damages. *J. A. St. Clair, as Executrix etc.* v. *Eastern Airlines Inc., and United States* (1962, 302 F. 2d 477, U.S. App. 2d Ct.).

New York law applied in determining right of plaintiff to interest on judgment for wrongful death of her decedent, where jurisdiction of suit, which was brought in the Southern District of New York was based on diversity of citizenship. *Id.*

Under New York law, plaintiff, who sued for wrongful death of her decedent who was killed in an accident in the District of Columbia, was entitled only to interest from date of judgment, and was not entitled to interest on the judgment from date of decedent's death. *Id.*

Federal court, for New York District, whose jurisdiction rested upon diversity of citizenship, would apply New York conflict of laws rules to death action arising out of airplane crash occurring over District of Columbia; and, accordingly, plaintiff's right to recover damages was governed by Wrongful Death Act of District of Columbia. *J. A. St. Clair, as Executrix etc.* v. *Eastern Airlines, Inc.* (1961, 194 F. Supp. 623).

New York statute requiring that judgment include interest from date of decedent's death was inapplicable to wrongful death action in which substantive right of recovery was based upon laws of District of Columbia. *Id.*

In wrongful death action against United States under Federal Tort Claims Act on ground that negligence of government employees in control tower at Washington National Airport in Virginia was contributing cause of collision, in District of Columbia, of Bolivian plane with commercial airline plane in which decedent was passenger, while both planes were attempting to land at airport, the applicable Virginia Wrongful Death Act limiting total recovery to $15,000 did not permit recovery of additional damages for loss of society and solatium, where plaintiffs had already recovered, under District of Columbia Wrongful Death Act, a greater sum from the commercial airline, a joint tort-feasor. *Cook et al.* v. *United States* (C.A. Conn. 1960, 274 F. 2d 689).

Action brought in District under wrongful death act of Nebraska is subject to the two-year limitation of that act and not the one-year limitation of section 16–1202. The law of the state where the death occurred should govern unless the public policy of the forum is clearly opposed. This section is confined to deaths within its jurisdiction. *Lewis* v. *Reconstruction Finance Corp.* (1949, 177 F. 2d 654, 85 U.S. App. D.C. 339).

10. Employers' Liability Act

This section is not repealed by the Employers' Liability Act (sections 44–401 to 44–405); but each act applies to cases arising under it and to none other. *Hyde* v. *Southern R. Co.* (31 App. D.C. 466).

11. Evidence

In action by pedestrian's administratrix against motorist for wrongful death of pedestrian who was struck by motorist's automobile shortly after midnight at or near intersection of two streets, evidence, which failed to establish that motorist should have seen pedestrian in time to avoid accident, to reveal pedestrian's direction of travel or the point of impact, or to show that motorist's speed was unreasonable under the circumstances, was not sufficient to warrant jury, on issue of negligence, in finding verdict for administratrix. *Skinner* v. *Koontz* (C.A.D.C. 1960, 284 F. 2d 207).

In action for wrongful death, evidence as to personal habits and qualities of decedent is to some degree relevant in determining decedent's earning ability and support that family would have received but for his death. *St. Clair as Executrix etc.* v. *Eastern Air Lines, Inc.* (C.A.N.Y. 1960, 279 F. 2d 119).

In action for wrongful death, defendant should not be permitted to put in evidence, on question of pecuniary loss suffered by decedent's family, everything that defendant may unearth and that reflects unfavorably on decedent. *Id.*

In action for wrongful death, except as details of decedent's personal life may show propensity of descendant to spend his income in ways which do not inure to benefit of family, such details are not in issue, and evidence as to such details is not admissible. *Id.*

In absence of some preliminary showing to contrary in action for wrongful death, a court ought not to suppose, for purpose of ascertaining pecuniary loss suffered by decedent's family, that evidence of manner in which decedent chooses to conduct his personal life is of utility in determining way he manages his business affairs. *Id.*

In action against railroad for death of passenger who fell through open vestibule doors of fast moving train, theory that railroad was negligent because fact that doors were later found by ticket collector to be swinging freely justified inference that they were not fully closed at time of last inspection or that there were defects in the latching mechanisms, was not supported by evidence, in view of uncontradicted testimony of ticket collector, who was plaintiff's witness, that doors were closed at last inspection and were not defective, and in view of other reasonable explanations for fact of doors swinging freely. *Pennsylvania R.R.* v. *Pomeroy* (1956, 239 F. 2d 435, 99 U.S. App. D.C. 272, certiorari denied 77 S. Ct. 861, 353 U.S. 950, 1 L. Ed. 2d 859).

In action against transit company for wrongful death of passenger as alleged result of his having been dragged or thrown under bus when his clothing caught in rear door of bus from which he was alighting there was no such insufficiency of evidence as would justify granting of defendant's motion for judgment non obstante verdicto and verdict was not so contrary to clear weight of evidence as to justify new trial. *Howard* v. *Capital Transit Co.* (1951, 97 F. Supp. 578, affirmed 196 F. 2d 593, 90 U.S. App. D.C. 359).

In action against transit company for wrongful death of passenger as alleged result of his having been dragged or thrown under bus when his clothing caught in rear door of bus from which he was alighting, where there were no witnesses who could positively identify deceased as having been passenger, trial court did not err in permitting introduction of evidence of bus schedules, on night in question, on routes from points near decedent's place of employment to point near his home and evidence that decedent possessed weekly bus pass. *Id.*

12. Federal Employees Compensation Act

Where government employee traveling on government business in commercial airline plane was killed in airplane accident due in part to negligence of commercial airline's pilot and widow sued commercial airline and agreed to a settlement, United States was entitled to statutory refund of compensation paid to widow under Federal Employees' Compensation Act, U.S. Code, title 5, § 751 et seq., to extent that refund did not exceed widow's share of the settlement, and this was so even though the negligence of control tower operator employed by United States also contributed to the accident. *Randall* v. *United States* (1960, 282 F. 2d 287, 108 U.S. App. D.C. 317, certiorari denied 81 S. Ct. 693, 365 U.S. 813, 5 L. Ed. 2d 692).

Where decedent's aunt petitioned for appointment as administratrix of estate of decedent, who died as result of injuries sustained in course of his employment as custodian at Howard University, on theory that estate had a valid cause of action for wrongful death against the university which decedent's widow was unwilling to assert, but petitioner, so far as record showed, presented no challenge to administrative determination of Bureau of Employees' Compensation that deceased was a federal employee and that decedent's widow was entitled to compensation under Federal Employees' Compensation Act (U.S. Code, title 5, § 751 et seq.), a determination which precluded any wrongful death action, petitioner was properly denied appointment as administratrix. *Tomlin* v. *Irvine* (1954, 212 F. 2d 635, 94 U.S. App. D.C. 101).

13. Instructions

In action for death of boy who was struck by truck traveling allegedly at 35 miles per hour in 25 miles per hour zone, where plaintiff did not offer expert testimony that at speed of 25 miles per hour accident would have been avoidable, and uncontradicted testimony established that accident occurred the moment boy stepped on roadway, there was no evidentiary basis for trial court's instruction on proximate cause that a "slow rate of speed" child would have been able to flee the truck's path or at least to escape death. *Gulf Oil Corp.* v. *E. E. Reed, as Administrator etc.* (1964, 334 F. 2d 960, —— U.S. App. D.C. ——).

In wrongful death action, wherein there was no evidence that decedent's former business associate, who denied stating that he had seen decedent unable to sign checks because of alcoholic condition and that decedent had left associate's employ because decedent might have been alcoholic, had made such statements to government agent, and defense counsel had been erroneously permitted to read into record questions from associate's deposition purportedly reciting such statements, instruction that it was entirely up to jury whether associate had made the statements to the agent was erroneous, and judge's observation that failure to produce agent lent credibility to associate's denial did not cure the harm, but only instruction to take associate's deposition testimony to the contrary as wholly uncontradicted would have sufficed. *St. Clair* v. *Eastern Air Lines, Inc.* (C.A.N.Y. 1960, 279 F. 2d 119).

14. Jurisdiction

The Municipal Court for the District of Columbia does not have jurisdiction of an action under this section, though recovery sought is limited to $3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon* v. *Driggers* (D.C. Mun. App. 1956, 125 A. 2d 847).

15. Measure of damages

In action for wrongful death of 9-week-old child, where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of $129.90. *Rankin etc.* v. *Shayne Brothers* (1956, 234 F. 2d 35, 98 U.S. App. D.C. 214).

Death action under this section, being in derogation of the common law, cannot be liberalized by judicial construction to extend a right of action to widow for loss of consortium due to death of husband, but such extension of the common-law doctrine, if it is to be made, must be done by express provisions of statute. *Ciarrocchi* v. *James Kane Co., et al.* (1953, 116 F. Supp. 848).

Damages in death case must be measured in light of situation existing as of date of death and are not affected by subsequent events. *Coleman* v. *Moore et al.* (1952, 108 F. Supp 425).

For wrongful death of wage-earning wife, husband was entitled to recover wife's potential financial contributions to maintenance of household and reasonable value of her services during their joint life expectancy, and therefore award of $5,000 to husband was not excessive, and fact that he remarried two years after wife's death could not be considered. *Id.*

Award of $3,000 to son for wrongful death of mother was not excessive where mother had helped to finance son's education, and fact that son abandoned school some time after mother's death had no significance. *Id.*

In damage suit for wrongful death, where deceased leaves a widow and four sons, one of whom is a minor, an instruction to the jury is erroneous which includes damages for reasonable expectations of prospective inheritance, prospective support, gifts, guidance, paternal advice and maintenance. *Baltimore & P. R. Co.* v. *Golway* (6 App. D.C. 143).

At common law, the right of a parent to recover for loss of the services of his minor child, like that of the husband for the services of the wife, is limited to the time that may have elapsed, if any, between the time of the injury giving rise to the action, and the resulting death. *United States Elec. Lighting Co.* v. *Sullivan* (22 App. D.C. 115).

Father as administrator is entitled to recover more than nominal damages for death of child between eight and nine years of age. *United States Elec. Lighting Co.* v. *Sullivan* (22 App. D.C. 115). See, also, *Smith* v. *Cissel* (22 App. D.C. 318).

"Section 1301, D.C. 1901 (this section), in effect, provides that the measure of damages shall be the injury resulting to the widow and next of kin. While section 1302 (§ 16–1202) requires the action to be brought in the name of the personal representative, section 1303 (§ 16–1203) in terms sets aside the damages recovered for the benefit of the family of the decedent. It will thus be seen that the duty of the administrator is simply to bring the suit allowed by the statute, and, in the event of a recovery, distribute the damages according to the provisions of the statute of distributions in force in this District." *Southern R. Co.* v. *Hawkins* (35 App. D.C. 313, 21 Ann. Cas. 926).

In action for death of sister, the amount of pecuniary loss is for the jury. *Ramsey* v. *Ross* (1936, 85 F. 2d 685, 66 App. D.C. 186).

The only damages recoverable in an action for wrongful death are those which constitute pecuniary loss to widow and next of kin for whose benefit action by administrator is brought. *Tate* v. *Nelson* (App. D.C. 1947, 71 F. Supp. 465).

The pecuniary loss to widow and next of kin for whose benefit action for wrongful death is brought by administrator is not dependent upon any legal liability of deceased to beneficiaries, but there must appear some reasonable expectation of pecuniary assistance or support of which they have been deprived. *Id.*

16. Parties defendant

No right of recovery exists where an officer kills one engaged in the commission of a felony and who draws a gun on the officer. *Harris* v. *Embrey* (1939, 105 F. 2d 111, 70 App. D.C. 232).

These sections apply to action for death of seaman on board a vessel owned by the Fleet Corporation occurring on the coast of Africa; and they also apply to the operator of the vessel joined as a defendant with the owner. *United States Shipping Board Emergency Fleet Corporation* v. *Greenwald* (C.C.A. 2, 1927, 16 F. 2d 948).

Where original complaint in wrongful death action was timely filed and process was timely placed in hands of marshal, but complaint did not properly name the defendants against whom relief was sought and process was not directed to such defendants, amended complaint which properly named defendants and which was filed after expiration of time for bringing wrongful death action, and process issued pursuant to amended complaint, did not relate back to filing of original complaint and to placing of first process in hands of marshal, and hence action was not commenced within time provided for bringing such action. *Harris* v. *Stone et al.* (1953, 115 F. Supp. 531).

Action may be maintained in this District against a druggist whose negligent filling of a prescription in the District results in death beyond the District. *Moore* v. *Pywell* (29 App. D.C. 312, 9 L.R.A., N.S., 1078).

17. Personal representative

Surviving children of decedent were not personal representatives within meaning of wrongful death statute (§§ 16–1201 to 16–1203), in the absence of appointment as such and consequently could not maintain action for wrongful death of decedent, notwithstanding Federal Rule of Civil Procedure 17(a), U.S. Code, title 28, Appendix, providing that every action shall be prosecuted in the name of the real party in interest and specifying exceptions thereto. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

Action under wrongful death act may only be maintained by personal representative if the wrongful act was one which would have entitled decedent to maintain it had death not ensued. *Brown* v. *Curtin & Johnson, Inc.* (1955, 221 F. 2d 106, 95 U.S. App. D.C. 234).

18. Reduction of verdict

Amount of award for death of child of tender years is matter which must be left to good sense of jury. *E. E. Reed, as Administrator, etc.* v. *Gulf Oil Corporation* (1963, 217 F. Supp. 370).

Verdict of $8,000 for "pecuniary loss" from death of 11 year old boy was not excessive. *M. E. Hankins, Administratix etc.* v. *Southern Foundation Corp., et al.* (1963, 216 F. Supp. 554).

Award of $17,000 for death of new-born baby as result of fall through hole in delivery table at time of birth was not so extreme as to cause appellate court to act of own motion to reduce award, under this section. *National Homeopathic Hospital* v. *Hord* (1953, 204 F. 2d 397, 92 U.S. App. D.C. 204).

19. Rehearing

Where request was made on petition for rehearing to have complaint, which had previously been considered only as one for wrongful death, considered as setting out cause of action for negligence, damages and malpractice, prior judgment dismissing complaint, which judgment had been affirmed by Court of Appeals, was modified so as to affirm dismissal only insofar as complaint set forth claim for death by wrongful act. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

20. Res ipsa loquitur

Doctrine of res ipsa loquitur did not apply to case where passenger fell fatally through open vestibule doors of moving train, in view of accessibility of doors to all passengers and fact that doors could have been opened freely by anyone. *Pennsylvania R.R. Co.* v. *Pomercy* (1956, 239 F. 2d 425, 99 U.S. App. D.C. 272, certiorari denied 77 S. Ct. 861, 353 U.S. 950, 1 L. Ed. 2d 859).

21. Witnesses, examination of

In wrongful death action, although plaintiff's counsel had not requested court to inqure whether defense counsel intended to proffer government agent as witness for purpose of impeaching decedent's business associate, who denied stating that he had seen decedent unable to sign checks because of alcoholic condition and that decedent had left his employ because decedent might have been alcoholic, where defense counsel had given no assurance that questions reciting the alleged statements were needed as foundation for contradiction of associate, and agent was not called, it was error to permit such question. *St. Clair* v. *Eastern Air Lines, Inc.* (C.A.N.Y. 1960, 279 F. 2d 119).

Cross-examination testimony of widow, which concerned initial acquaintanceship between her and decedent, her knowledge, when she began seeing him, that he was married to another, her familiarity with progress of divorce suit by the other, and whether or not she and decedent had been living at his apartment prior to their marriage, was irrelevant to question of pecuniary loss suffered by widow and by decedent's child and should not have been admitted in widow's and child's wrongful death action. *Id.*

22. Workmen's Compensation Act

Section 36–501 et seq. creates a right of action against employer on account of death of employee arising out of and in course of employment, but it does not create a cause of action for wrongful death against any other person. *Webster* v. *Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D.C. 171, 143 A.L.R. 280, certiorari denied 63 S. Ct. 261, 317 U.S. 689, 87 L. Ed. 552).

Workmen's Compensation Act, U.S. Code, title 33, § 901 et seq., applicable to District of Columbia, providing in part that liability of an employer under act shall be exclusive and in place of all other liability, would have precluded employee from maintaining action for heart injury suffered while moving a piano in the course of his employment by defendant, if the injury had not resulted in death, and thus his widow and children, who had accepted benefits of Compensation Act, could not maintain action under this section making right of action dependent on whether decedent would have been able to maintain action for injury if death had not ensued. *O'Neil* v. *Shelton Bros. Trucking Co.* (1953, 116 F. Supp. 654).

Where widow has elected to receive compensation under Longshoremen's and Harbor Workers' Compensation Act, U.S. Code, title 33, § 901 et seq., but widow is not the only person for whose benefit an action for wrongful death may be maintained, any moneys paid or to be paid as compensation to the widow may not be shown in the action for wrongful death in extinguishment or reduction of her pecuniary loss. *Tate* v. *Nelson* (App. D.C. 1947, 71 F. Supp. 465).

§ 16–2702. Party plaintiff—Statute of limitations.

An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person, and within one year after the death of the person injured. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §16–1202 (Mar. 3, 1901, ch. 854, § 1302, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543).

Changes are made in phraseology.

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1. In general

Action for wrongful death must fail if not brought by personal representative. *Harris* v. *Embrey* (1939, 105 F. 2d 111, 70 App. D.C. 232).

2. Abuse of discretion

In action for wrongful death, record disclosed District Court did not abuse its discretion in denying application of plaintiff for additional time to qualify as personal representatives within meaning of this section. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

3. Actions against United States

An action against the United States for death by wrongful act or negligence in the District was not barred by the one-year statute of limitations under this section, but was governed by the Federal Court of Claims Act. The attention and precision devoted by Congress to the question of limitations require that effect be given to the period which it prescribes notwithstanding the fact that the cause of action against the United States may not, in a local jurisdicion, be the same in duration as therein authorized against a private individual. *Young* v. *United States* (1950, 184 F. 2d 587).

4. Aliens, action by

That decedent's daughter was a national of Greece and an alleged alien enemy did not toll this section for bringing wrongful death action where such daughter was a resident of Michigan at time of accident, and it was upon her petition that administrator of the estate of decedent was appointed, and there was no reason why daughter could not have instituted such suit within the year following death of decedent. *Summar* v. *Besser Mfg. Co.* (1945, 17 N.W. 2d 209, 310 Mich. 347).

This section was not tolled because decedent's widow, daughter, and son were nationals and residents of Greece, and allegedly alien enemies because of German occupation of Greece, since suit might have been prosecuted in their behalf notwithstanding the Trading With the Enemy Act, U.S. Code, title 50 App., § 1 et seq. *Id.*

5. Amendment

Where original complaint in wrongful death action was timely filed and process was timely placed in hands of marshal, but complaint did not properly name the defendants against whom relief was sought and process

was not directed to such defendants, amended complaint which properly named defendants and which was filed after expiration of time for bringing wrongful death action, and process issued pursuant to amended complaint, did not relate back to filing of original complaint and to placing of first process in hands of marshal, and hence action was not commenced within time provided for bringing such action. *Harris* v. *Stone et al.* (1953, 115 F. Supp. 531).

6. —— Of complaint

Where plaintiff sought to recover under wrongful death statute and, after being given leave to amend, amended complaint without indicating her intent to rely on survival statute, alleged error of District Court in dismissing her complaint seeking recovery under survival statute could not be raised for first time on appeal. *G. E. Meyers, Administratix etc.* v. *Alvey-Ferguson Co., et al.* (1964, 326 F. 2d 590, U.S. App. Sixth Circuit).

7. Construction with other laws

Federal court, for New York District, whose jurisdiction rested upon diversity of citizenship, would apply New York conflict of laws rules to death action arising out of airplane crash occurring over District of Columbia; and, accordingly, plaintiff's right to recover damages was governed by Wrongful Death Act of District of Columbia. *J. A. St. Clair as Executrix etc.* v. *Eastern Airlines, Inc.* (1961, 194 F. Supp. 623).

New York statute requiring that judgment include interest from date of decedent's death was inapplicable to wrongful death action in which substantive right of recovery was based upon laws of District of Columbia. *Id.*

Section 36–501 does not alter the period of limitations in this section. *Webster* v. *Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D.C. 171, 143 A.L.R. 280, certiorari denied 63 S. Ct. 261, 317 U.S. 689, 87 L. Ed. 552).

Where defendant caused death of employee of another under such circumstances that, if death had not ensued, the employee would have been entitled to maintain action against defendant or to recover compensation under section 36–501, death action instituted under this section within one year after appointment of guardian for employee's infant son but more than one year after death was barred by limitation of this section, notwithstanding employees' compensation act provision that one year limitation on right to compensation for death should not be applicable to infants until appointment of guardian. *Id.*

This section was not inapplicable to action for death caused by automobile in the District on ground that application of such limitation would contravene the Michigan statute, Comp. Laws 1929, providing for suspending of running of limitations when any person is disabled to prosecute an action, where it was not shown that decedent's administrator might not have brought the action in Michigan within one year following death. *Summar* v. *Besser Mfg. Co.* (1945, 17 N. W. 2d 209, 310 Mich. 347).

Action brought in District under wrongful death act of Nebraska is subject to the two-year limitation of that act, and not the one-year limitation of this section. The law of the state where the death occurred should govern unless the public policy of the form is clearly opposed. This section is confined to deaths within its jurisdiction. *Lewis* v. *Reconstruction Finance Corp.* (1949, 177 F. 2d 654, 85 U.S. App. D.C. 339).

Where workmen's compensation carrier brought action against airline for wrongful death of deceased for whose death it had paid compensation to widow, and such death occurred in District of Columbia which barred actions for wrongful death commenced more than one year after death, action begun in New York more than one year after death was barred. *Hartford Accident & Indemnity Co.* v. *Eastern Air Lines Inc.* (1957, 155 F. Supp. 263).

An action brought by the State of Maryland where the death occurred in accordance with a Maryland statute is entitled to be maintained within the District as one for wrongful death. *State of Maryland* v. *Eastern Airlines* (1949, 81 F. Supp. 345).

8. Diligence of plaintiff

Where action was brought within this section's period against nonresident of District of Columbia for death caused by automobile, and over three years after the death and two years and one month after action had been filed service was made on the nonresident, but during the intervening period five summonses had been issued at less than six-month intervals for personal service on the nonresident, there was a sufficient showing of "diligence," so that ruling that there had been a "discontinuance" of the action because of undue delay was improper. *Seymour* v. *Hawkins* (1943, 133 F. 2d 15, 76 U.S. App. D.C. 376, 167 A.L.R. 1055).

9. Executor, administrator or representative

Surviving children of decedent, were not personal representatives within meaning of §§ 16–1201 to 16–1203, in the absence of appointment as such and consequently could not maintain action for wrongful death of decedent, notwithstanding Federal Civil Procedure Rule 17(a), U.S. Code, title 28, Appendix, providing that every action shall be prosecuted in the name of the real party in interest and specifying exceptions thereto. *Paris et al.* v. *Braden, M.D., Casualty Hosp., Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

The term "legal representative" is not necessarily restricted to personal representatives of deceased, but is sufficiently broad to cover all persons who, with respect to deceased's property, stand in deceased's place and represent deceased's interest, whether transferred to them by deceased's act or by operation of law. *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

The term "legal representative" has been held to mean either the executor or administrator of the deceased. *Ferguson* v. *Washington & R. G. Co.* (6 App. D.C. 525). See, also, *Southern R. Co.* v. *Hawkins* (35 App. D.C. 313, 21 Ann. Cas. 926).

Words "personal representative" have been held to refer either to the executor or administrator, and hence, as the right of the action is statutory, no person other than those upon whom authority is expressly conferred may maintain action. *Fleming* v. *Capital Trac. Co.* (40 App. D.C. 489).

10. Measure of damages

In action for wrongful death of nine-week-old child where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of $129.90. *Rankin* v. *Shayne Brothers* (1956, 234 F. 2d 35, 98 U.S. App. D.C. 214).

11. Residency

This section was not inapplicable to action for death caused by automobile in the District because some of decedent's heirs did not reside in the District during the year following the death, where two of the heirs resided in the District, and by operating a motor vehicle in the District, nonresident owner and his agent subject themselves to jurisdiction of the courts of the District of Columbia. *Summar* v. *Besser Mfg. Co.* (1945, N. W. 2d 209, 310 Mich. 347).

12. Statute, a limitation of right

This section is a limitation of the right and not merely of the remedy. *Hartford Accident & Indemnity Co.* v. *Eastern Air Lines Inc.* (1957, 155 F. Supp. 263).

13. Tolling of statute

Pendency of action for personal injuries did not toll statute of limitations on death claim. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

14. Workmen's Compensation Act

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation, may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co.* v. *Moses* (1933, 53 S. Ct. 231, 287 U.S. 530, 77 L. Ed. 477, 88 A.L.R. 647).

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under §§ 16–1201 to 16–1203, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the em-

ployee having the right to demand that such action be brought and that he share in the recovery. *Doleman* v. *Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

§ 16–2703. Distribution of damages.

The damages recovered in an action pursuant to this chapter, except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial, may not be appropriated to the payment of the debts or liabilities of the deceased person, but inure to the benefit of his or her family and shall be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of an allocation, according to the provisions of the statute of distribution in force in the District. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1203 (Mar. 3, 1901, ch. 854, § 1303, 31 Stat. 1395; June 19, 1948, ch. 507, § 2, 62 Stat. 437).

Minor changes are made in phraseology.

Cross References

Hospital lien on proceeds, see § 38–301.

Law of descents, see § 18–101 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of administrator 1
Measure of damages 2

1. Duty of administrator

Recovery not liable for debts of deceased, but, nevertheless, it is the duty of administrator to institute suit, if facts warrant it. *Fleming* v. *Capital Trac. Co.* (40 App. D.C. 489).

2. Measure of damages

In action for wrongful death of nine-week-old child, where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of $129.90. *Rankin* v. *Shayne Brothers* (1956, 234 F. 2d 35, 98 U.S. App. D.C. 214).

Chapter 29.—PARTITION AND ASSIGNMENT OF DOWER

SUBCHAPTER I.—PARTITION GENERALLY

Sec.
16–2901. Parties—Accounting by tenant in common.

SUBCHAPTER II.—ASSIGNMENT OF DOWER—PARTIES TO PARTITION PROCEEDINGS—SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

16–2921. Appointment of commissioners—Cases of partition.
16–2922. Widow or widower of tenant in common.
16–2923. Wife or husband as a party to partition proceeding.
16–2924. Sale of land encumbered by dower—lack of widow's or widower's consent—Written consent—Portion of proceeds.
16–2925. Sale of indivisible property—Discharged from dower or intestate share.

SUBCHAPTER I.—PARTITION GENERALLY

§ 16–2901. Parties—Accounting by tenant in common.

The United States District Court for the District of Columbia may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common, claiming by descent or purchase, or of a joint tenant; or when it appears that the property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.

(b) This section applies to cases where:

(1) all the parties are of full age;

(2) all the parties are infants;

(3) some of the parties are of full age and some are infants;

(4) some or all of the parties are non compos mentis; and

(5) all or any of the parties are non-residents—

and a party, whether of full age, infant, or non compos mentis, may file a complaint pursuant to this section, an infant by his guardian or next friend, and a person non compos mentis by his committee.

(c) In a case of partition, when a tenant in common has received the rents and profits of the property to his own use, he may be required to account to his cotenants for their respective shares of the rents and profits. Amounts found to be due on the accounting may be charged against the share of the party owing them in the property, or its proceeds in case of sale.

(d) This section does not affect section 21–213. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1301 (Mar. 3, 1901, ch. 854, § 93, 31 Stat. 1203; June 30, 1902, ch. 1329, 32 Stat. 523).

Reference to "coparcener", which followed the reference to "joint tenant", is omitted from subsec. (a) of this section, as there are no estates in coparcenary in the District of Columbia. See section 45–817 of D.C. Code, 1961 ed.

"United States District Court for the District of Columbia" is substituted for "equity court", as the latter term is obsolete. See revision note under section 11–502 herein.

The term "real property" is substituted for "lands, tenements, or hereditaments" in conformity with modern usage.

The term "complaint" is substituted for "bill or petition", in view of rule 2 of the Federal Rules of Civil Procedure. There is nothing in those rules indicating that they do not apply to partition proceedings in the District Court in the District of Columbia. This type of proceeding is not listed in rule 81(a) among the proceedings in that court to which the rules do not apply.

Subsec. (d) is added for the purpose of clarification. Both section 21–213, referred to therein, and section 16–1301 of D.C. Code, 1961 ed., on which this revised section is based, are derived from section 93 of act Mar. 3, 1901, ch. 854, cited above. Probably, the provisions should be read together.

Changes are made in phraseology and arrangement.

Cross References

Dower rights, see § 18–201 et seq.

Estates in coparcenary abolished, see § 45–817.

NOTES TO DECISIONS UNDER PRIOR LAW

Accounting 2
Community of interest 3
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Historical 1
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Title 16

1. Historical

For history of partition of District of Columbia among original proprietors, see *Bursey* v. *Lyon* (30 App. D.C. 597).

2. Accounting

Statute creates equitable lien against the interest of a cotenant to the amount found to be due from him on accounting permitted by statute. *Loving* v. *Moore* (37 App. D.C. 214).

Quaere: Whether common-law action of account lies by one tenant in common against the other who has secured more than his just share, in view of provisions of this section. *Lyon* v. *Bursey* (42 App. D.C. 519).

When one of tenants in common occupied property without payment of rent, an accounting under this section would not be allowable inasmuch as this section presupposes a subletting. *Allen* v. *Jones* (1926, 12 F. 2d 186, 56 App. D.C. 245).

3. Community of interest

Where greater part of a market building was held by the plaintiff except two market stalls held by the defendants under purported leases containing provisions for perpetual renewal, parties were not "tenants in common" so as to entitle the plaintiff to partition notwithstanding there was a community of interest in the entrances and exits of the building and other elements, where as to the stall holders such elements were in the nature of easements if the basic grants were considered fees or constituted implied conditions in the leases, if the basic documents were deemed leases. *Second Realty Corp.* v. *Krogmann* (1956, 235 F. 2d 510, 98 U.S. App. D.C. 283).

4. Cotenants

A tenancy by the entireties shares with a joint tenancy the right of the survivor to take all, but it is only in a tenancy by the entireties that it is impossible for one cotenant to sell or pledge his interest or to compel a partition of the property. *Coleman* v. *Jackson* (C.A.D.C. 1960, 286 F. 2d 98).

Mere acquiescence by one tenant in common in upkeep and improvements by his cotenant, who has complete possession of the common property, is not sufficient to establish partition in pais, without proof of some agreement between the parties to that end. *Addison* v. *Barnes* (45 App. D.C. 284).

A cotenant is not liable to his cotenants for use and occupation, unless there has been an actual or constructive ouster of the cotenants. *Allen* v. *Jones* (1926, 12 F. 2d 186, 56 App. D.C. 245).

Where marriage relationship was dissolved at suit of wife by Florida court, full faith and credit being given Florida judgment, the estate of which husband and wife were seised as tenants by the entireties on date of that decree became a "tenancy in common," and hence complaint for seeking partition of the property would be treated as one between tenants in common. *Scholl* v. *Scholl* (1947, 72 F. Supp. 823).

5. Counsel fees

In partition, the fees of plaintiff's attorney cannot be charged against all the parties when in good faith they retain and are represented by other counsel. *Fletcher* v. *Coomes* (1923, 285 F. 893, 52 App. D.C. 159, certiorari denied 43 S. Ct. 363, 261 U.S. 619, 67 L. Ed. 830).

6. Definitions

The terms "parties" and "rights" mentioned in this section are defined and limited by the provisions of §§ 16–1305 and 16–1306. *Devlin* v. *Esher* (1922, 280 F. 1004, 52 App. D.C. 30).

7. Dower

Inchoate dower right of a wife of a tenant in common is not to be set off to the wife on sale of the property for partition, but the husband is entitled to entire distributive share. *Devlin* v. *Esher* (1922, 280 F. 1004, 52 App. D.C. 30).

8. Laches

Where will devised property of testatrix to her daughter and grandson as tenants in common, and grandson attained majority in 1939 and was in military service between 1940 and 1941, action by grandson in 1950 for partition and accounting was not barred by laches. *Greene* v. *Murphy* (1952, 103 F. Supp. 585).

9. Law governing

To the extent that statutory law does not cover subject of dower completely, the common law still controls. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

10. Order of sale

Where the property is susceptible of division in kind, a sale will not be ordered against the will of one of the parties. *Walker* v. *Lyon* (6 App. D.C. 484).

In partition proceeding where widow requests assignment of dower, after assignment is made court has power to proceed to order a sale and division of proceeds. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

11. Parties

"No one is entitled to maintain partition who has not an estate that entitles him to immediate possession." *Sis* v. *Boarman* (11 App. D.C. 116).

12. Purpose

This chapter regarding partition and assignment of dower was intended to achieve a comprehensive plan for partition and sale of property held in common subject to right of dower as well as other situations of common and joint ownership. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

13. Remedies

This section recognizes two distinct remedies: partition in kind and partition through sale and division of the proceeds, but a person entitled to either remedy must be a tenant in common, a joint tenant or a coparcener. *Second Realty Corp.* v. *Krogmann* (1956, 235 F. 2d 510, 98 U.S. App. D.C. 283).

14. Res judicata

Decisions of courts of Michigan, in which testator resided at time of his death, that share of his residuary estate, devised by will to a remainderman who died before deaths of testator and last surviving life beneficiary, should be divided equally between deceased remainderman's sister and half-brother as deceased's sole legal heirs on date of last surviving life beneficiary's death, were not res judicata in suit for partition of portion of residuary realty in District of Columbia, but courts of District had exclusive jurisdiction to decide what disposition should be made of such share. *Greenwood* v. *Page* (1944, 138 F. 2d 921, 78 U.S. App. D.C. 166).

15. Surety

In action on bond of trustee for sale of infant's property, the surety cannot be heard to question validity of the bond. *United States ex rel. Hine* v. *Morse* (1912, 31 S. Ct. 37, 218 U.S. 493, 54 L. Ed. 1123).

16. Title

A mere averment of title in defendant is not sufficient to make a question of title: "proof is required to show that the claim of title is fair and reasonable, and not a mere sham intended to delay and embarrass the complainant." *Smith* v. *Butler* (15 App. D.C. 345).

While the jurisdiction of a court of equity to decree partition, or sale for partition, is undoubted in cases where there is no serious question of legal title as between the parties, it is equally well settled that the court does not sustain a bill for partition unless the legal title be clear and where the legal title is disputed, the court will retain the bill to give the plaintiff an opportunity to establish his title at law. *Roller* v. *Clarke* (19 App. D.C. 539, modified on other ground 26 S. Ct. 141, 199 U.S. 641, 50 L. Ed. 300).

"A bill of partition can not be made the means of trying a disputed title." *Staub* v. *Staub* (47 App. D.C. 180) citing *Jordan* v. *O'Brien* (33 App. D.C. 189); *Hasler* v. *Williams* (34 App. D.C. 319), distinguishing *Taylor* v. *Leesnitzer* (37 App. D.C. 356) where rights were determined because no motion to dismiss was made. See, also, *Goodman* v. *Wren* (34 App. D.C. 516) re rights of equitable owners to maintain partition.

Where title to property purchased by husband and wife was taken in their names as tenants by the entireties,

and both parties obligated themselves for balance due on a first trust, as of date of divorce decree obtained by wife in Florida, the parties became "tenants in common" and were equally bound by terms of contract of purchase and equally liable on the trust, so that wife was entitled to one-half of net value of the estate as of date of divorce decree, less any monies that either had paid on the property for benefit of other since date of the last accounting. *Scholl* v. *Scholl* (1947, 72 F. Supp. 823).

SUBCHAPTER II.—ASSIGNMENT OF DOWER—PARTIES TO PARTITION PROCEEDING—SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

§ 16–2921. Appointment of commissioners—Cases of partition.

When real property is held by a person or persons, by descent or purchase, in the whole of which a widow or widower is entitled to dower, either the widow or widower or a person entitled to the property or an undivided share therein may apply to the United States District Court for the District of Columbia to have the dower therein assigned. Thereupon, the court shall appoint three commissioners to lay off and assign the dower, if practicable. The report of the commissioners is subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real property, in the whole or which a widow or widower is entitled to dower, the dower shall be laid off and assigned, in like manner, before the partition is decreed. When an estate of which a woman or man is dowable is entire, and the dower can not be set off therefrom by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1302 (Mar. 3, 1901, ch. 854, § 86, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, to conform with act Sept. 14, 1961, Pub. L. 87–246, § 3, 75 Stat. 515 (D.C. Code, 1961 ed., § 18–201a), which restored the wife's right of dower (previously abolished by act Aug. 31, 1957, Pub. L. 85–244, § 3, 71 Stat. 530, with respect to persons who intermarried on or after Nov. 29, 1957), and created a statutory right of dower in both wives and husbands. It provided further that all laws relating to dower and its incidents should, on and after March 15, 1962 (effective date of the act), be construed to be applicable to both husband and wife.

Changes are made in phraseology.

Cross References

Release of dower, see § 30–216.

Release of dower of a person non compos mentis, see § 21–301.

NOTES TO DECISIONS UNDER PRIOR LAW

Assignment, effect of 1
Condition precedent 2
Right to assignment 3
Specifically 4

1. Assignment, effect of

After assignment of dower has been made, the widow's estate is in the nature of "tenements and hereditaments" within this chapter authorizing partition and is then subject to partition sale since it is, then, just as divestible a property right as if the division had been by metes and bounds of the land itself. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

After assignment of dower and entry into possession, widow becomes seized for her lifetime of a freehold estate. *Id.*

2. Condition precedent

Assignment of dower is condition precedent to partition. *Hasler* v. *Williams* (34 App. D.C. 319).

3. Right to assignment

Upon death of husband, a widow's right to dower is in the nature of a chose in action, including the right to have the dower assigned. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

4. Specifically

Construing the word "specifically" it is said: "The act undoubtedly requires explicitness and certainty; it requires that the owner of the property * * * should have full and accurate notice of the claims of those who deal with the latter upon the faith of the legal liability of the property. For that purpose it requires that 'the amount claimed' should be set forth specifically; but it is the amount claimed, not the items that go to make up that amount, that is required to be so stated." *Emack* v. *Campbell* (14 App. D.C. 186).

§ 16–2922. Widow or widower of tenant in common.

When a widow or widower of a tenant in common of real property is entitled to dower in his or her undivided share of the property, and a partition is decreed between his or her heirs or devisees and the other tenants in common, the dower attaches to, and may, in the manner provided by section 16–2921, be assigned and laid out in, the shares assigned in severalty to the heirs or devisees, and the shares of the other tenants in common shall be assigned to them, respectively, in severalty, free from the dower. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1951 ed., § 16–1303 (Mar. 3, 1901, ch. 854, § 87, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband. See revision note under section 16–2921 herein.

Changes are made in phraseology.

§ 16–2923. Wife or husband as party to partition proceeding.

On an application to the District Court to decree a partition of real property between tenants in common, it shall not be necessary to make the wife or husband of any of the persons a party to the proceedings, but the right of dower, or the wife's or husband's intestate share, as the case may be, shall attach to whatever part of the property is assigned in severalty to the wife or husband, and the other parts thereof shall be assigned free of the right of dower or intestate share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1951 ed., § 16–1304 (Mar. 3, 1901, ch. 854, § 88, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, and to the intestate share of either, in view of later developments in the law. See revision note under section 16–2921 herein; and see, also, D.C. Code, 1961 ed., §§ 18–101, 18–201a, 18–204, 18–210, 18–211, 18–212, 18–215a.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. In general

Under this section and sections 89, 90 and 93, Code of 1901 (§§ 16–1301, 16–1305, 16–1306), property may be sold

by way of partition, free of a wife's inchoate right of dower, and the husband is entitled to his entire distributive share. *Devlin* v. *Esher* (1922, 280 F. 1004, 52 App. D.C. 30).

§ 16–2924. Sale of land encumbered by dower—Lack of widow's or widower's consent—Written consent—Portion of proceeds.

When a decree is rendered for the sale of real property, in the whole of which a widow or widower is entitled to dower, if she or he will not consent to a sale of the property free of the dower, the District Court may, if it appears advantageous to the parties, cause the dower to be laid off and assigned as provided by this subchapter. If she or he will consent in writing to the sale of the property free of the dower, the court shall order that it be sold free of the dower, and shall allow her or him, in commutation of the dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth, according to the age, health, and condition of the widow or widower. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1951 ed., § 16–1305 (Mar. 3, 1901, ch. 854, § 89, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband. See revision note under section 16–2921 herein.

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of court 1
Formula for division 2

1. Duty of court

Where dower interest of widow is involved in partition proceeding, the court must first determine, in its discretion, whether it appears advantageous to parties including widow to cause her dower to be laid off and assigned, and only after assignment has been made can court proceed with sale without consent of widow. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

2. Formula for division

Where widow refuses to consent to partition sale but requests assignment of dower and court after making assignment proceeds to order sale and division of proceeds, in making division of proceeds it is proper for court to use statutory formula applicable to situation in which widow consents to sale, but it is equally proper for court to apply common law formula. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

§ 16–2925. Sale of indivisible property—Discharge from dower or intestate share.

When real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the property is incapable of being divided between them in specie, the District Court may decree a sale of the property free and discharged from any right of dower or from any intestate share of the wife or husband, as the case may be, of any of the parties in her or his undivided share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241 § 1.)

Revision Notes

Based on D.C. Code, 1951 ed., § 16–1306 (Mar. 3, 1901, ch. 854, § 90, 31 Stat. 1203).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, and to the intestate share of either, in view of later developments in the law. See revision note under section 16–2921 herein; and see, also, D.C. Code, 1961 ed., §§ 18–101, 18–120a, 18–204, 18–210, 18–211, 18–212, 18–215a.

Changes are made in phraseology.

Chapter 31.—PROBATE COURT PROCEEDINGS

Sec.
16–3101. Definition.
16–3102. Settlement of accounts as prima facie evidence only.
16–3103. Summons—Failure to appear or give evidence.
16–3104. Sequestration where person fails to appear.
16–3105. Plenary proceeding—Refusal to answer as required.
16–3106. Issues to be made up in plenary proceeding—Jury—Compelling payment of costs.
16–3107. Enforcement of judgments, orders and decrees—Application of property sequestrated.
16–3108. Ordering investment of funds—Revocation of letters for noncompliance.
16–3109. Compelling performance of duties by executors, administrators, etc.—Revocation of letters.
16–3110. Accounting and delivering of property after revocation of letters—Compelling performance.
16–3111. Order admitting will to probate as conclusive evidence.
16–3112. Arbitration—Exceptions.
16–3113. Costs and execution.

§ 16–3101. Definition.

As used in this chapter, "Probate Court" means the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1.)

Revision Notes

Section is new, but states no new law, and is inserted for the purpose of clarification and completeness. See section 11–522 herein, particularly subsec. (d) thereof.

§ 16–3102. Settlement of accounts as prima facie evidence only.

Except as provided by section 16–3112, in actions:

(1) for an accounting, by legatees or next to kin against executors or administrators, or wards against their guardians; or

(2) to subject the real estate of decedents to the payment of their debts, by creditors against executors or administrators, or against heirs or devisees—

a prior settlement of accounts in the Probate Court is only prima facie evidence as to the correctness of the accounts. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–504 (Mar. 3, 1901, ch. 854, § 119, 31 Stat. 1208; June 30, 1902, ch. 1329, 32 Stat. 525).

Section is based on part of section 11–504 of D.C. Code, 1961 ed. For remainder of section 11–504, see tables.

Changes are made in phraseology and arrangement.

§ 16–3103. Summons—Failure to appear or give evidence.

A summons issued by the Probate Court to a person concerned in the affairs of a deceased person, or to a witness or other person whose appearance in the court is deemed necessary or proper, is returnable at the discretion of the court. When it is necessary or proper, on the return of the "summoned", and failure of the person to appear, to enforce his appearance, or when a witness before the court refuses to give evidence, the court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States

Code, or it may have his estate, or a part thereof attached and sequestered as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–506 (Act of Maryland, 1798, ch. 101, subch. 15, § 13; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

The provision empowering the probate court to issue the summons referred to is omitted as covered by section 1651 of Title 28, United States Code. That section provides that the Supreme Court of the United States "and all courts established by Act of Congress" may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

As alternatives to the methods of enforcement provided for in this section, section 11–506 of D.C. Code, 1961 ed., provided (1) that the probate court might, on return of the "summoned", and failure of the party to appear, issue an attachment, and, when he appeared or was brought in, fine him a maximum of $30; and (2) that if a witness before the court refused to give evidence, the court might commit him to the custody of the marshal or coroner "(if the case may require)", there to remain until he gave evidence, or was discharged according to law. These provisions are omitted as covered by provisions in Title 28, United States Code. The United States District Court for the District of Columbia, which in the exercise of its probate jurisdiction, is known as the Probate Court (see section 11–522 herein), has been, since the enactment of Title 28, United States Code, into law, in 1948, a United States district court, and has the same powers as those of other district courts. See sections 88 and 132 of that title. It is included within the definition of "court of the United States" (as used in that title) contained in section 451 of that title. Section 401 of Title 18, United States Code, which title was also enacted into law in 1948, provides for contempt powers of a "court of the United States", and while the term is not defined in that title, the bills to enact Titles 18 and 28 of that Code into law were companion bills. They were approved on the same date and became effective on the same date, and, considering the changed status of the United States District Court for the District of Columbia since the enactment of Title 28, the term "court of the United States", as used in Title 18, embraces that court. Therefore, section 401 of Title 18, United States Code, and the above cited section 1651 of Title 28 thereof, cover or supersede the above-mentioned provisions relating to attachment of the person and punishment for contempt, which, as stated, are omitted. However, for the purpose of clarification and completeness, words "may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code," are inserted.

Changes are made in phraseology.

§ 16–3104. Sequestration where person fails to appear.

(a) If two summonses issued to a person by the Probate Court are regularly returned non est by the United States marshal and it is necessary to proceed further to compel the person's attendance, the court may order and issue an attachment against his real and personal property. On return of the attachment, to which a schedule of the attached property, if any, shall be annexed, the court, by order, or commission under seal, may authorize a person or persons to take into his or their care and custody the property returned in the schedule, or a part thereof, and receive the profits thereof, to be accounted for, until the person summoned appears and obeys the order of the court, or until further order. If the marshal or other officer does not deliver the property accordingly, he is liable to be proceeded against as provided by this subsection.

(b) The persons authorized pursuant to subsection (a) of this section to take into their care and custody the property referred to shall first give bond to the United States with such security, and in such penalty, as the court directs. The bond shall be recorded, may be sued on, shall be on a footing with an administration bond, and shall be conditioned for rendering a true account of the estate or property, and of the profits thereof, and to deliver the property according to the order of the court, after deducting such allowance for loss, and such commission, not exceeding 5 per centum of the whole, as the court deems proper.

(c) When the purpose for which property sequestered under this section is answered, the court shall direct that the estate or property, and the profits, after making the deductions authorized by subsection (b) of this section, be restored to the person from whom the care and custody of the property were taken. When the person is dead, the court shall order the property to be delivered to his heirs, devisees or legal representatives, as soon as the purpose of the sequestration is answered, or immediately, on application, and on satisfying the court of the person's right, if the purpose, after the death of the original person, can not be answered. (Dec. 23, 1963, 77 Stat. 599; Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–508 (Act of Maryland, 1798, ch. 101, subch. 15, § 15; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Changes are made in phraseology and arrangement.

§ 16–3105. Plenary proceeding—Refusal to answer as required.

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmaton. If the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or it may have his property attached and sequestered as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–509 (Act of Maryland, 1798, ch. 191, subch. 15, § 16; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Words "the Court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code," are substituted for "the said party may be attached, fined, and committed". See revision note under section 16–3103 herein.

Changes are made in phraseology.

§ 16–3106. Issues to be made up in plenary proceeding—Jury—Compelling payment of costs.

In a plenary proceeding provided for by section 16–3105, the Probate Court shall give judgment, or decree upon the bill an answer, or upon bill, answer, depositions, or finding of the jury. In all cases of contest, the court may award costs to the party deemed entitled thereto, and may compel payment by exercising its powers of enforcement and punishment as provided by section 401 of Title 18, United

States Code, or by attachment and sequestration of the property as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–510 (Act of Maryland, 1798, ch. 101, subch. 15, § 17; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Words "by exercising its powers of enforcement and punishment as provided in section 401 of Title, United States Code", are substituted for "by attachment of the body, and fine,". See revision note under section 16–3103 herein.

Changes are made in phraseology.

§ 16–3107. Enforcement of judgments, orders and decrees—Application of property sequestrated.

The Probate Court may enforce its judgments, orders, decrees, and decisions in the manner provided by sections 16–3103 and 16–3104. When a judgment, order, decree, or decision is for the payment of money, the court may apply the property sequestrated to the purpose for which the judgment, order, decree, or decision is given. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–512 (Act of Maryland, 1798, ch. 101, subch. 15, § 20; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

The provision at the beginning of section 11–512 of D.C. Code, 1961 ed., "The probate court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this Code", is omitted as obsolete, or, in any event, unnecessary. See revision note under section 11–502 herein. There are no longer statutory special terms of the District Court designated as probate court, equity court, etc., and there is no more reason to enact such a provision as this, with respect to the District Court in the exercise of its probate jurisdiction and powers (see section 11–522 herein), than there would be to enact similar provisions with respect to its other jurisdiction.

Words "at the discretion of the court,", which related to the Court's application of the property sequestrated to the purpose for which the judgment, order, etc., is given, are omitted as surplusage. See revision note under section 16–2349 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Application of statutes 1
Continuance of jurisdiction 2
Custody of minors 3
Enforcement of decrees 4
Jurisdiction 5
Power to remove administrator 6

1. Application of statutes

As the powers of the probate court are strictly limited, the statutes are equally applicable, at least so far as they are pertinent to the administration of all estates in the District, whether domiciliary or ancillary. *Duehay* v. *Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A.L.R. 1268).

2. Continuance of jurisdiction

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

3. Custody of minors

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relation Branch of the Municipal Court. *Id.*

4. Enforcement of decrees

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

5. Jurisdiction

The bankruptcy court had exclusive jurisdiction to determine title to decedent's liquor store which administratrix had allowed bankrupt to control and operate, and such determination would not interefere with jurisdiction of probate court. *N. M. White, Personally etc.* v. *M. F. Schwartz, Trustee etc.* (1962, 302 F. 2d 916, 112 U.S. App D.C. 331).

6. Power to remove administrator

Like its predecessor, the orphan's court of Maryland, the Probate Court is a court of special jurisdiction with limited powers, and consequently, unless power to remove an executor for a particular cause can be found in the statute, or by necessary inference therefrom, it does not exist. *Hawley* v. *Hawley* (1940, 114 F. 2d 505, 72 App. D.C. 357).

Unless power of probate court to remove an administratrix for a particular cause can be found in this chapter or by necessary inference therefrom, it does not exist. D.C. Code. *Perkins* v. *Berger* (1944, 145 F. 2d 856, 79 U.S. App. D.C. 286).

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. *Id.*

§ 16–3108. Ordering investment of funds—Revocation of letters for noncompliance.

The Probate Court may order an executor, administrator, collector, or guardian, whom it has appointed, to bring into court or invest in securities, to be approved by the court, any funds received by the executor, administrator, collector, or guardian. If the party does not, within a reasonable time, to be fixed by the court, comply with the order, the court may revoke his letters. (Dec. 23, 1963, 77 Stat. 600 Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–513 (Mar. 3, 1901, ch. 854, § 123, 31 Stat. 1209).

Changes are made in phraseology.

CROSS REFERENCE

Investments of funds held by direction of will, see § 20–115.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Commingling of funds by executor

Where money was deposited in bank by executor, mingled with his own and subject to his check at all times, it renders both him and his coexecutor, who acquiesced in this disposition, liable for legal interest on the fund during the whole time of his possession. *Mades* v. *Miller* (2 App. D.C. 455).

§ 16–3109. Compelling performance of duties by executors, administrators, etc.—Revocation of letters.

The Probate Court may order an executor, administrator, collector, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of an inventory or account or the fulfillment of a duty in the court, to be summoned

to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act. On his appearance, the court may make such order as is just. On his failure to appear, after having been duly summoned, the court may revoke his power to act and make such further order and other appointment as justice requires. If the summons to appear is returned by the marshal "not to be found," an alias summons shall be mailed to the last-known post-office address of the fiduciary or served upon his attorney of record, if he is within the jurisdiction of the court. On the failure of the fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice requires. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–514 (Mar. 3, 1901, ch. 854, § 126, 31 Stat. 1210; Apr. 19, 1920, ch. 153, 41 Stat. 557).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Removal of administrator

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly, court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. *C. P. Henry* v. *J. A. Grimes, Jr.* (1964, 334 F. 2d 550, —— U.S. App. D.C. ——).

An executor or administrator can be removed only for legal causes specified in the statute, which confers power upon the probate court. *Hawley* v. *Hawley* (1940, 114 F. 2d 505, 72 App. D.C. 357).

§ 16–3110. Accounting and delivering of property after revocation of letters—Compelling performance.

When the Probate Court revokes letters testamentary or of administration, collection, or guardianship, the party whose letters are revoked shall render forthwith an account of his administration or guardianship up to the period of the rendition of the account and deliver and turn over to the person appointed in his place all the estate, money, and effects remaining in his hands that were received and held by him by virtue of his appointment so revoked. All moneys in the hands of an executor, administrator, or collector realized by him by the sale of the specific property are unadministered assets and shall be turned over in like manner. The court may direct the bond of the executor, administrator, or collector whose letters are revoked to be put in suit for the use of the new administrator or collector appointed in his place. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–515 (Mar. 3, 1901, ch. 854, § 127, 31 Stat. 1210).

The provision in section 11–515 of D.C. Code, 1961 ed., that, with respect to the duties prescribed in this section, empowered the court to "compel the performance of said duty in the manner hereinafter mentioned", is omitted as unnecessary and covered by section 401 of Title 18, United States Code. See revision note under section 16–3103 herein. As set out in chapter 5 of Title 11 of D C. Code, 1961 ed., the only section in that chapter, or in the 1901 act, to which the above-quoted words in section 11–515 of D.C. Code, 1961 ed., "in the manner hereinafter mentioned", apparently could have related, was section 11–516 thereof (section 129 of the 1901 act, as amended by act June 30, 1902, ch. 1329, 32 Stat. 526), which provided that "The said court [Probate Court], in addition to the powers herein specially conferred, shall have power to enforce its judgments, orders and decrees in like manner as orders and decrees may be enforced in the equity court", and that section is omitted from this revision as obsolete. See revision note under section 11–502 herein.

Changes are made in phraseology.

Cross Reference

Distribution before discovery of will or before will is declared invalid, see § 20–106.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Removal without notice and trial

When executors and administrators are once regularly appointed and qualified they can not be removed without notice and a trial. *Brosnan* v. *Brosnan* (1923, 289 F. 547, 53 App. D.C. 149).

§ 16–3111. Order admitting will to probate as conclusive evidence.

With respect to the trial of issues in the Probate Court, including the taking and use of testimony of non-resident witnesses, the Federal Rules of Civil Procedure, unless otherwise provided by law, are applicable thereto. A final order or decree admitting a will to probate, unless and until it is reversed, is conclusive evidence of the validity of the will in a collateral proceeding in which the will is brought into question, and a transcript of the record of the will, and of the decree admitting it to probate, is sufficient proof thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–519 (Mar. 1901, ch. 854, § 144, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 526; June 7, 1934, ch. 426, 48 Stat. 926)

The first sentence is substituted for the first two sentences of section 11–519 of D.C. Code, 1961 ed., which at least in part are obsolete, and which read as follows: "The said court shall have authority to take the testimony of nonresident witnesses, and such depositions, as well as depositions de bene esse, taken according to law, may be read at the trial of any issue in said court. On the trial of any such issue exceptions may be taken to the rulings of the court, and the said court may set aside the verdict and grant a new trial for the same causes and in the same manner as in case of a trial in the United States Court of Appeals for the District of Columbia."

Regarding the above-quoted second sentence of section 11–519 of D.C. Code, 1961 ed., it is assumed that the substitution in the 1961 edition of the Code of the reference to the court of appeals for the former reference therein to the "Circuit Court", a former special term of the district court, at which "common-law" civil causes were heard, was merely a typographical error. See revision note under section 11–502 herein.

The Federal Rules of Civil Procedure are applicable to civil actions in the District of Columbia district court, and Rule 46 thereof abolished formal exceptions in the trial thereof.

The sentence substituted for the first two sentences of section 11–519 of D.C. Code, 1961 ed., brings the procedure more into harmony with that provided by the Federal Civil Rules for civil actions. However, the exception clause, "unless otherwise provided by law" is included, in recognition of other statutes relating to the trial of issues in probate matters. See, for example, section 19–312 of D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Unprobated will as evidence

Where plaintiff sought to enjoin obstruction of right of way easement on theory that plaintiff and her predecessors in title continuously, openly, notoriously, and adversely used right of way for more than 20 years, unprobated will of plaintiff's predecessor which had been filed in probate

court was properly received to prove privity, a transfer of possession, and continuity of interest. *Bonds* v. *Smith* (1944, 143 F. 2d 369, 79 U.S. App. D.C. 118).

§ 16-3112. Arbitration—Exceptions.

The Probate Court may, with the consent in writing of both parties, arbitrate between a complainant and an executor or administrator, or between an executor or administrator and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of the arbitrator, and the court may confirm or overrule the award. The award when confirmed is conclusive between the parties. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-520 (Mar. 3, 1901, ch. 854, § 145, 31 Stat. 1215).

Minor changes are made in phraseology.

§ 16-3113. Costs and execution.

The Probate Court may render judgment for costs against the unsuccessful party in any proceeding conducted in the court, and issue execution thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-518 (Mar. 3, 1901, ch. 854, § 143, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 526).

Minor changes are made in phraseology.

CROSS REFERENCES

Fees and costs, see § 15-701 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Costs in probate proceedings 1
Discretion 2

1. Costs in probate proceedings

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *Adlung, Executor, etc.* v. *Gotthardt et al.* (1958, 257 F. 2d 199, 103 U.S. App. D.C. 195).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

2. Discretion

Court has discretionary power, notwithstanding this section, to award costs to the party in their opinion entitled thereto. *Hutchins* v. *Hutchins* (48 App. D.C. 286). See, also, *Manning* v. *Childress* (48 App. D.C. 256).

Chapter 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

Sec.
16-3301. Complaint—Allegations—Parties—Service—Decree.

§ 16-3301. Complaint—Allegations—Parties—Service—Decree.

When title to real property in the District of Columbia has become vested in a person by adverse possession, the holder thereof may file a complaint in the United States District Court for the District of Columbia to have the title perfected. In the complaint, it is sufficient to allege that the plaintiff holds the title to the property, and that it has vested in him, or in himself and in those under whom he claims, by adverse possession. In the action, it is not necessary to make any person a party defendant except those persons who appear to have a claim or title adverse to that of the plaintiff. Upon the trial of the cause, proof of the facts showing title in the plaintiff by adverse possession entitles him to a decree of the court declaring his title by adverse possession, and a copy of the decree may be entered of record in the office of the Recorder of Deeds for the District.

(b) In an action pursuant to this section, if process is returned not to be found, notice by publication may be substituted as in the case of nonresident defendants. Subject to subsection (c) of this section, if it is known whether one who, if living, would be an adverse party, is living or dead, or, in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with pursuant to section 13-341.

(c) The rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities, but the entire period during which they shall be preserved may not exceed twenty-two years from the time they accrued, either in the plaintiff or in the persons under whom he claims. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1501 (Mar. 3, 1901, ch. 854, § 111, 31 Stat. 1207; June 30, 1902, ch. 1329, 321 Stat. 524; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The term "complaint" is substituted for "bill," and "plaintiff" is substituted for "complainant", in conformity with the Federal Rules of Civil Procedure. See rules 3 and 4 thereof.

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Adverse possession as a defense, see § 16-1113.

Periods of limitation, see § 12-301.

NOTES TO DECISIONS UNDER PRIOR LAW

Cotenant 2
Duration of possession 3
Ejectment 4
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In general 1
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Possession to be adverse 8
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Purpose of statute 10
Remedy 11
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1. In general

"A great deal of indulgence has always been extended to one in the undisturbed possession of property, in respect of proceedings to quiet or perfect a title that had not been assailed." *Myers* v. *Mayhew* (32 App. D.C. 205).

"A title is good (as distinguished from good of record) if it has been acquired by adverse possession under such circumstances, and for such length of time, as to render it indefeasible at law or in equity." *Marsh* v. *Kenyon* (37 App. D.C. 574).

2. Cotenant

One cotenant may hold adversely to his co-owner, although ouster or disseisin is not to be presumed from the mere fact of sole possession. *Henderson* v. *Mann* (47 App. D.C. 174).

3. Duration of possession

Where plaintiff's possession for 31-year period of realty in which she was cotenant with others was admittedly actual, exclusive, and continuous, and, in the court's view, hostile, open and notorious, she was entitled to decree establishing title in her by adverse possession. *Welch* v. *Unknown Heirs, Lipscomb et al.* (1955, 226 F. 2d 776, 96 U.S. App. D.C. 412).

Adverse possession held clearly shown by 30 years' possession of lot with clearly defined boundaries which extended beyond the line as surveyed. *Brumbaugh* v. *Gompers* (1921, 269 F. 472, 50 App. D.C. 130).

4. Ejectment

This section has no application to action in ejection based upon title by adverse possession. *McMillan* v. *Fuller* (41 App. D.C. 384).

5. Evidence

Evidence held sufficient to be submitted to the jury on the question of adverse possession. *Davis* v. *Coblens* (1899, 19 S. Ct. 832, 174 U.S. 719, 43 L. Ed. 1147).

6. Inclosure

"Actual inclosure is not necessary to prove possession; that while inclosure is the most tangible evidence of possession, a continuous, uninterrupted, open, actual, exclusive, and adverse possession is in law equally as satisfactory." *Howison* v. *Masson* (29 App. D.C. 338).

7. Limitation of actions

There is an apparent conflict between § 111 (this section) and § 1265 (§ 12–201) of the 1929 edition, as to the extent of the principal limitation of actions, and also as to the extent of the saving to parties under disabilities. But in order to give effect to both sections, the former section being the act of Congress of March 3, 1899, must be read as an exception to the latter more general provision. *Gwin* v. *Brown* (21 App. D.C. 295).

8. Possession to be adverse

Possession, to become adverse, and effectual to defeat a clear pre-existing legal title, must be actual, continuous, and exclusive, attended with such manifest intention of holding and continuing the possession as will make that possession notorious to every one interested in reclaiming the property to the rightful ownership. *Reid* v. *Anderson* (13 App. D.C. 30).

9. Possession under mistake

Title by adverse possession may be secured although possession was had under mistake (whether the mistake was honest or deliberate). *Rudolph* v. *Peters* (35 App. D.C. 438, Ann. Cas. 1912A, 446).

10. Purpose of statute

This section is a statute of repose and is designed to prevent further litigation and to settle a title which parties have suffered to remain unquestioned long enough to assume their acquiescence therein. *Welch* v. *Unknown Heirs, Lipscomb et al.* (1955, 226 F. 2d 776, 96 U.S. App. D.C. 412).

11. Remedy

A bill in equity is the proper remedy to perfect title by adverse possession, and not ejectment, where defendants have not entered into possession or attempted to oust the plaintiff. *Myers* v. *Mayhew* (32 App. D.C. 205).

12. Subsequent abandonment

Title acquired by adverse possession is not loss by subsequent abandonment of possession. *Myers* v. *Mayhew* (32 App. D.C. 205).

Chapter 35.—QUO WARRANTO

Sec.
16–3501. Persons against whom issued—Civil action.
16–3502. Parties who may institute—Ex rel. proceedings.
16–3503. Refusal of Attorney General or United States attorney to act—Procedure.
16–3504. Allegations in petition of relator claiming office.
16–3505. Notice to defendant.
16–3506. Proceedings on default.
16–3507. Pleading—Jury trial.
16–3508. Verdict and judgment.
16–3509. Usurping corporate franchise—Judgment.
16–3510. Proceedings against corporate directors and trustees—Judgment and order—Enforcement.
16–3511. Recovery of damages from usurper—Limitation.

§ 16–3501. Persons against whom issued—Civil action.

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against—

(1) a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in a domestic corporation; or

(2) one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District corporate rights, privileges, or franchises not granted them by law in force in the District.

The proceedings shall be deemed a civil action. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1601 (Mar. 3, 1901, ch. 854, § 1538, 31 Stat. 1419; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

Cross Reference

Proceedings for a forfeiture of all rights and privileges of institutions or learning, see § 29–413.

NOTES TO DECISIONS UNDER PRIOR LAW

Common-law principles 1
Nature and scope of remedy 2

1. Common-law principles

Sections 16–1601 to 16–1604 of this chapter regarding writ of quo warranto leave the former common-law principles governing the issuance of writs of quo warranto in full force. *U.S. ex rel. Noel* v. *Carmody* (1945, 148 F. 2d 684, 80 U.S. App. D.C. 58).

2. Nature and scope of remedy

Quo warranto is only available against a person who unlawfully holds a public office or an office in a domestic corporation, or against a person or persons who unwarrantedly claim corporate status, and is not an appropriate remedy for attempted revocation of corporate charter of bar association on ground of alleged abuse and misuse of its charter. *United States ex rel. Robinson* v. *Bar Association of District of Columbia* (1952, 197 F. 2d 408, 91 U.S. App. D.C. 5).

§ 16–3502. Parties who may institute; ex rel. proceedings.

The Attorney General or the United States attorney may institute a proceeding pursuant to this chapter on his own motion, or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned for the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1602 (Mar. 3, 1901, ch. 854, § 1539, 31 Stat. 1420; June 25, 1948, ch. 646, § 1, 62 Stat. 909).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Claimant to office 1
Complaint, sufficiency 2
Not an adequate remedy at law 3
Third person 4

1. Claimant to office

A citizen and taxpayer who makes no claim to the office can not make application for quo warranto. *Newman* v. *United States ex rel. Frizzell* (1915, 35 S. Ct. 881, 238

U.S. 537, 59 L. Ed. 1446). See also, *Hayes* v. *Burns* (25 App. D.C. 243, appeal dismissed 26 S. Ct. 744, 201 U.S. 650, 50 L. Ed. 905).

A writ of quo warranto may issue against an officer of a private corporation on complaint of one of its members or stockholders, even though the relator does not himself seek the same office. *U.S. ex rel. Noel* v. *Carmody* (1945, 148 F. 2d 684, 80 U.S. App. D.C. 58).

2. Complaint, sufficiency

Where by-law of Bar Association provided for committee on nominations which was directed to nominate at least two and not more than three names for each of offices to be filled, at ensuing election, committee nominated only one individual for office of president because of committee's inability to find another member who was both qualified for office and willing to be considered, another nominee was presented by petition, but the committee's nominee received overwhelming majority of votes, quo warranto complaint to remove committee's nominee from office of president was properly dismissed. *U.S. ex rel. Noel* v. *Carmody* (1945, 148 F. 2d 684, 80 U.S. App. D.C. 58).

3. Not an adequate remedy at law

Quo warranto is not an adequate remedy at law because the right to bring such action is not absolute, but lies within the discretion of the Attorney General or of the district attorney or of the court. *Columbian Cat Fanciers* v. *Koehne* (1938, 96 F. 2d 529, 68 App. D.C. 257).

4. Third person

Congress used the words "third person" in the sense of "any person." *Newman* v. *United States ex rel. Frizzell* (1914, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446).

§ 16-3503. Refusal of Attorney General or United States attorney to act—Procedure.

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of the interested person, on his compliance with the condition prescribed by section 16-3502 as to security for costs. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1603 (Mar. 3, 1901, ch. 854, § 1540, 31 Stat. 1420; June 25, 1948, ch. 646, § 1, 62 Stat. 909).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Person interested

The interest which will justify such a proceeding by a private individual must be more than that of a taxpayer; it must be an interest in the office itself, and must be peculiar to the applicant. *Newman* v. *United States ex rel. Frizzell* (1914, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446).

The action must be brought by a person claiming title to the office in question and out of possession thereof. *Columbian Cat Fanciers* v. *Koehne* (1938, 96 F. 2d 529, 68 App. D.C. 257).

§ 16-3504. Allegations in petition of relator claiming office.

When a quo warranto proceedings is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1604 (Mar. 3, 1901, ch. 854, § 1541, 31 Stat. 1420).

A minor change is made in phraseology.

§ 16-3505. Notice to defendant.

On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant can not be found in the District, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1605 (Mar. 3, 1901, ch. 854, § 1542, 31 Stat. 1420; June 30, 1902, ch. 1329, 32 Stat. 544).

Minor changes are made in phraseology.

§ 16-3506. Proceedings on default.

If the defendant does not appear as required by a writ of quo warranto, after being personally served, the court may proceed to hear proof in support of the writ, and render judgment accordingly. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1606 (Mar. 3, 1901, ch. 854, § 1543, 31 Stat. 1420).

Minor changes are made in phraseology.

§ 16-3507. Pleading—Jury trial.

In a quo warranto proceeding, the defendant may demur or plead specially or plead "not guilty" as the general issue, and the United States may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1607 (Mar. 3, 1901, ch. 854, § 1544, 31 Stat. 1420).

Minor changes are made in phraseology.

§ 16-3508. Verdict and judgment.

Where a defendant in a quo warranto proceeding is found by the jury to have usurped or intruded into or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1608 (Mar. 3, 1901, ch. 854, § 1545, 31 Stat. 1420).

Minor changes are made in phraseology.

§ 16-3509. Usurping corporate franchise—Judgment.

Where a quo warranto proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1609 (Mar. 3, 1901, ch. 854, § 1546, 31 Stat. 1420).

A minor change is made in phraseology.

§ 16-3510. Proceedings against corporate directors and trustees—Judgment and order—Enforcement.

Where a quo warranto proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if the error is corrected, the court may render judgment that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and the court may issue an order to the proper parties, being officers or members of the corporation, to admit him to the office. The judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the office, and obedience to judgment may be enforced by attachment. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1610 (Mar. 3, 1901, ch. 854, § 1547, 31 Stat. 1420).

Reference to court order is substituted for reference to mandamus, in conformity with the Federal Rules of Civil Procedure. Rule 81(b) thereof abolished the writ of mandamus and provides that the relief theretofore available under mandamus may be obtained by appropriate action or motion under the practice prescribed in those rules.

Changes are made in phraseology.

§ 16-3511. Recovery of damages from usurper—Limitation.

At any time within a year after a judgment in a quo warranto proceeding, the relator may bring an action against the party ousted and recover the damages sustained by the relator by reason of the ousted party's usurpation of the office to which the relator was entitled. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1611 (Mar. 3, 1901, ch. 854, § 1548, 31 Stat. 1421).

Changes are made in phraseology.

Chapter 37.—REPLEVIN

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
16-3701. Demand prior to action—Costs.
16-3702. Form of complaint.
16-3703. Affidavit—Contents.
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SUBCHAPTER II.—REPLEVIN IN COURT OF GENERAL SESSIONS

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16-3731. Jurisdiction—Form of complaint.
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16-3733. Undertaking to abide judgment of the court.
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16-3737. Retention of property by marshal—Sufficiency of undertaking, quashing writ, and return of property.
16-3738. Motion for return of property—Procedure—Objection to sufficiency of security.
16-3739. Determination and measure of plaintiff's damages.
16-3740. Judgment for defendant and determination of damages.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 16-3701. Demand prior to action—Costs.

In an action of replevin brought to recover personal property to which the plaintiff is entitled, that is alleged to have been wrongfully taken by or to be in the possession of and wrongfully detained by the defendant, it is not necessary to demand possession of the property before bringing the action; but the costs of the action may be awarded as the court orders. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16-1801 (Mar. 3, 1901, ch. 854, § 1549, 31 Stat. 1421).

Changes are made in phraseology.

CROSS REFERENCES

Replevin,
Attachment suits, see § 16-517.
Court of General Sessions, see §§ 16-3731 to 16-3740.

NOTES TO DECISIONS UNDER PRIOR LAW

Common law applicable 1
Fraudulent purchase 2
Goods taken by police 3
Nature of action 4
Promissory notes 5
Right to possession 6
Sufficiency of bill in equity 7

1. Common law applicable

Common-law rules prevail as to powers of officers in executing a writ of replevin. "The rule of the common law * * * seems to be that an officer, in executing a writ of replevin, may not break an outer door or window of a dwelling to gain entrance to seize the property of the occupant or of a person rightfully domiciled therein. He may enter either an open outer door or window, provided it can be accomplished without committing a breach of the peace; he may then, after a request and refusal, break open any inner doors belonging to the defendant, in order to take the goods. We think a further reasonable rule is deducible from the cases, that when an officer. in the execution of a writ, finds an outer door or window slightly ajar, but not sufficiently so to admit him, he may open the door or window, provided he does not find it obstructed, but if it is fastened or obstructed so as to require force to overcome the obstruction, he may not use such force for such an entrance would constitute a breaking." *Palmer* v. *King* (41 App. D.C. 419, L.R.A. 1916 D, 278, Ann. Cas. 1915 C, 1139).

2. Fraudulent purchase

When vendor replevies goods on ground that the purchase was fraudulent and it appears that the value of the goods was in excess of balance due the vendor, it is proper to tender the excess to the defendant and upon his refusal to receive tender, pay the amount into court. *Samaha* v. *Mason* (27 App. D.C. 470).

3. Goods taken by police

Replevy of goods taken by police from person accused of crime, see *Mutual Comm. & Stock Co.* v. *Moore* (13 App. D.C. 78).

4. Nature of action

It is fundamental that the gist of the action of replevin is plaintiff's right to immediate possession and defendant's wrongful taking or wrongful or unlawful detention. *Daime* v. *Price* (D.C. Mun. App. 1949, 63 A. 2d 767).

5. Promissory notes

Replevin action is proper against a bank to recover possession of overdue promissory notes received by it from a private bank to secure a payment of an overdraft, when it is apparent the notes evidenced a debt secured by deed of trust on property that was owned by plaintiff and her sister, that the debt was paid on maturity of the notes and they were left with banking firm for safekeeping but the bank used them to pay overdraft without plaintiff's authority. *District Nat. Bank* v. *Trimble* (46 App. D.C. 319).

6. Right to possession

The plaintiff in replevin action cannot recover on the weakness of defendant's title; to recover the plaintiff must have a right to immediate possession of the property at the commencement of the action. *Smith, Kirkpatrick & Co., Inc., et al.* v. *Continental Autos, Ltd., et al.* (1960, 184 F. Supp. 764).

7. Sufficiency of bill in equity

Equity will not require a specific delivery of art collection when the bill does not disclose what, if any, disposition of the art collection was made or attempted to be made in the will. *Dante* v. *Hutchins* (1920, 265 F. 988, 49 App. D.C. 348, certiorari denied 41 S. Ct. 9, 254 U.S. 635, 65 L. Ed 450).

§ 16–3702. Form of complaint.

A complaint in replevin shall be in the following or equivalent form:

"The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) the plaintiff's goods and chattels, to wit: (describe them) of the value of ——— dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloigned, that he may have judgment of their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1802 (Mar. 3, 1901, ch. 854, § 1550, 31 Stat. 1421).

Reference to "declaration" is changed to "complaint", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

A minor change is made in phraseology.

§ 16–3703. Affidavit—Contents.

At the time of filing a complaint in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating that—

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proopsed to be replevied, being the same described in the complaint;

(2) the defendant has seized and detained or detains the chattels; and

(3) the chattels were not subject to the seizure or detention and were not taken upon a writ of replevin between the parties.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1803 (Mar. 3, 1901, ch. 854, § 1551, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

"Complaint" is substituted for "declaration", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 16–3704. Undertaking to abide judgment of the court.

At the time of filing a complaint in replevin, the plaintiff shall enter into an undertaking by himself or his agent with surety, approved by the clerk, to abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1804 (Mar. 3, 1901, ch. 854, § 1552, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

Changes are made in phraseology.

Cross Reference

General provision concerning bonds, see § 28–2401 et seq.

§ 16–3705. Failure of officer to obtain possession—Procedure.

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for detention, or he may renew the writ in order to obtain possession of the goods and chattels themselves. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1805 (Mar. 3, 1901, ch. 854, § 1553, 31 Stat. 1421).

"Complaint" is substituted for "declaration", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

Words "notice to plead,", which related, also, to service, are omitted as covered by the word "summons". See rule 4(b) of the Federal Rules of Civil Procedure.

Reference to "affidavit" is inserted, in view of section 16–3703 herein. See, also, section 11–726 of D.C. Code, 1961 ed., which related to replevin in the Municipal Court (now the Court of General Sessions), and which is carried into section 11–3734 herein.

Minor changes are made in phraseology.

Cross Reference

Replevin in attachment proceedings, see § 16–517.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Damages for value and detention

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ by prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D.C. Mun. App. 1947, 50 A. 2d 815).

§ 16–3706. Publication against defendant.

When the officer's return of a writ of replevin is that he has taken possession of the goods and chattels sued for, but indicates that personal service on the defendant could not be made, the court, subject to the provisions of section 13–340 as to

mailing notice, may order that the defendant appear to the action by a fixed day. The plaintiff shall cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1806 (Mar. 3, 1901, ch. 854, § 1554, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

Changes are made in phraseology.

§ 16–3707. Default.

If, after notice as provided by section 16-3706, the defendant fails to appear, the court may proceed as in case of default after personal service. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1807 (Mar. 3, 1901, ch. 854, § 1555, 31 Stat. 1421).

Changes are made in phraseology.

§ 16–3708. Motion for return of property—Procedure—Objection to sufficiency of security.

(a) On the taking possession of the goods and chattels by the marshal by virtue of a writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession. Thereupon, the court may inquire into the circumstances and manner of the defendant's obtaining possession of the property, and, if it seems just, may order the property to be returned to the possession of the defendant, to abide the final judgment in the action. The court may require the defendant to enter into an undertaking with surety or sureties, similar to that required of the plaintiff upon the commencement of the action. In such case, the court shall render judgment against the surety or sureties, as well as against the defendant.

(b) When it appears that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return of the property to the possession of the defendant. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking of the plaintiff, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1809 (Mar. 3, 1901, ch. 854, § 1557, 31 Stat. 1422; June 30, 1902, ch. 1329, 32 Stat. 544; Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312).

The last sentence of section 16–1809 of D.C. Code, 1961 ed., which made that section applicable to the Municipal Court (now the Court of General Sessions), is omitted as covered by section 16-3738 herein.

Changes are made in phraseology and arrangement.

§ 16–3709. Notice to officer of intention to move for return—Duty of officer—Time of motion.

If the defendant in an action of replevin notifies the officer taking possession of the property, in writing, of his intention to make either of the motions specified by section 16–3708, the officer shall retain possession of the property until the motion is disposed of, if the motion is filed and notice given, as provided by section 16–3708, to the plaintiff or his attorney, within two days thereafter. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1810 (Mar. 3, 1901, ch. 854, § 1558, 31 Stat. 1422).

Changes are made in phraseology.

§ 16–3710. Determination and measure of plaintiff's damages.

Whether, in an action of replevin, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service or publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where jury trial had been waived or there is no issue of fact, and the damages shall be the full value of the goods, if eloigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention, and the judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1811 (Mar. 3, 1901, ch. 854, § 1559, 31 Stat. 1422).

Words "the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court," are substituted for "the defendant plead and the issue thereon joined is found against him, or his plea is held bad on demurrer,"; and words "jury trial had been waived or" are inserted after "or by a jury of inquest, where", for the purpose of conforming the provisions, or rendering them more in consonance, with the Federal Rules of Civil Procedure. See, particularly, rules 7 (a), (c), 12, 38, 39, 41, 56, and 64 thereof. See, also, the latter part of rule 55(b)(2) thereof, which, with respect to default judgments entered by the court, provided that the amount of damages shall be determined by a jury if "required by any statute of the United States". Under rule 81(e) of those rules, section 1599 of the act of 1901, cited above, from which section 16–1811 of the D.C. Code, 1961 ed., was derived, and on which this section is based, is a "statute of the United States".

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence 1
Instructions 2
Right to possession 3
Subsequent action 4

1. Evidence

Testimony of witness that, when he took check drawn by defendant's husband, now deceased, to order of cash to bank and had it cashed for him, defendant's husband stated that he intended to use the money to buy furniture from third party was inadmissible as part of "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1946, 49 A. 2d 913).

2. Instructions

Defendant's instruction that question for jury to determine was whether plaintiff had shown by a fair preponderance of evidence that on date she brought replevin suit she was entitled as against all the world to immediate and exclusive possession of the furniture which was subject of the suit was properly modified by substituting for the words "all the world" the words "the defendant." *Jackson* v. *Goode* (D.C. Mun App. 1946, 49 A. 2d 913).

3. Right to possession

Testimony as to statements made by defendant's deceased husband that he bought the property in controversy in replevin suit from certain person was not admissible as part of the "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1946, 49 A. 2d 913).

In replevin suits it is not necessarily the title which is in issue but merely the right to possession as between the parties. *Id.*

4. Subsequent action

A buyer who brings replevin for the possession of an automobile repossessed by the seller, with nominal damages for detention, is not thereby barred from subsequent action for illegal and malicious seizure. *Wardman-Justice Motors* v. *Petrie* (1930, 39 F. 2d 512, 59 App. D.C. 262, 69 A.L.R. 648).

§ 16–3711. Judgment for defendant and determination of damages.

When, in an action of replevin, the issue is found for the defendant, or the plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against the plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages for their detention, or, on failure, that the defendant recover against the plaintiff and his surety the damages sustained by him. The damages shall be assessed by the jury trying the issue; or, where jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or he dismisses or fails to prosecute his suit, by a jury of inquest. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1812 (Mar. 3, 1901, ch. 854, § 1560, 31 Stat. 1422).

Near the beginning, words "or judgment is rendered against the plaintiff on proper motion under rules of court," are inserted after "prosecute his suit,"; and, near the end, words "jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or" are inserted after "or, where", for the purpose of conforming the provisions, or rendering them more in consonance, with the Federal Rules of Civil Procedure. See, particularly, rules 12, 38, 39, 41, 56, and 64 thereof.

Changes are made in phraseology.

§ 16–3712. Verdict where goods are eloigned.

If the defendant in an action of replevin has eloigned the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1813 (Mar. 3, 1901, ch. 854, § 1561, 31 Stat. 1422).

Minor changes are made in phraseology.

§ 16–3713. Judgment where goods are eloigned.

The judgment in a case where the defendant has eloigned the goods sued for, shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–1814 (Mar. 3, 1901, ch. 854, § 1562, 31 Stat. 1422).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Where goods not recovered

If the goods are not recovered in the replevin proceeding, or returned within ten days after judgment, the plaintiff shall be entitled to judgment for the value of the goods as damages, and also damages for the detention. *Wardman-Justice Motors* v. *Petrie* (1930, 39 F. 2d 512, 59 App. D.C. 262, 69 A.L.R. 648).

SUBCHAPTER II.—REPLEVIN IN COURT OF GENERAL SESSIONS

§ 16–3731. Jurisdiction—Form of complaint.

The District of Columbia Court of General Sessions may issue a writ of replevin when a plaintiff files a complaint in replevin, in the following or an equivalent form:

"The plaintiff sues the defendant for wrongfully taking and detaining (or wrongfully detaining) the plaintiff's, goods and chattels, to wit (here describe them), of the value of ——— dollars. And the plaintiff claims that the same may be taken and delivered to him, or, if they are eloigned, that he may have judgment for their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–725, 11–751a, 11–755 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is based on the first part of section 11–725 of D.C. Code, 1961 ed. Remainder of section 11–725 is carried into sections 16–3732 and 16–3733 herein. Section 11–755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, with respect to the merger, by the act of 1942, of the Municipal Court of the District of Columbia and the Police Court, to form the Municipal Court for the District of Columbia, subsec. (a) of that section provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus established, and the judges thereof, should have and exercise the same powers and jurisdiction as were theretofore had and exercised by the former two courts, and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the District of Columbia Court of General Sessions and the judges thereof should have and exercise the same powers and jurisdiction as were previously vested in the Municipal Court for the District of Columbia and the judges theerof.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The term "complaint" is substituted for "declaration", in conformity with rules 2, 3, and 7(a) of the Civil Rules of the Court.

Changes are made in phraseology.

Cross Reference

Procedure, see § 13–101.

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof 1
Value of goods 2

1. Burden of proof

In replevin to recover household goods which defendant claimed as a gift from plaintiff and which, it was not disputed, had originally been plaintiff's property, defendant had burden of establishing a gift of such goods. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

In replevin to recover household goods which plaintiff claimed defendant had bought for plaintiff with his money and which defendant claimed to have bought with her own money, burden of proof upon such issue was upon plaintiff, and, if no evidence were produced on either side, plaintiff would have been out of court. *Id.*

2. Value of goods

Phrase "value of the goods" within statute relating to damages in replevin is not synonoymous with balance due under a contract. *P. Becton* v. *Walker-Thomas etc.* (D.C. App. 1963, 192 A. 2d 125).

§ 16–3732. Affidavits—Contents.

At the time of filing a complaint pursuant to section 16–3731, the plaintiff, his agent, or attorney shall file an affidavit stating that—

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of the chattels described in the complaint;

(2) the defendant has seized and detains or detains the chattels;

(3) the chattels were not subject to the seizure or detention, and were not taken under a writ of replevin between the parties; and

(4) the chattels are not of the value of more than $10,000.

(Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–725 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Section is based on part of section 11–725 of D.C. Code, 1961 ed. Remainder of section 11–725 is carried into sections 16–3731 and 16–3733 herein.

The term "complaint" is substituted for "declaration", in conformity with rules, 2, 3, and 7(a) of the Civil Rules of the Court.

In clause (4), "$10,000" is substituted for "$1,000", to conform the provision with the present civil jurisdiction of the Court of General Sessions. See section 11–961 herein.

Changes are made in phraseology and arrangement.

§ 16–3733. Undertaking to abide judgment of the Court.

At the time of filing a complaint pursuant to section 16–3731, the plaintiff shall enter into an undertaking, with surety approved by the court, submitting to the jurisdiction of the court, to abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–725 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Section is based on part of section 11–725 of D.C. Code, 1961 ed. Remainder of section 11–725 is carried into sections 16–3731 and 16–3733 herein.

Changes are made in phraseology.

§ 16–3734. Failure of officer to obtain possession.

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for the detention, not to exceed in all $10,000 or he may renew the writ, in order to obtain possession of the goods and chattels themselves. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–726 (Mar. 3, 1901, ch. 854, § 14, 31 Stat. 1192; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

The term "complaint" is substituted for "declaration", in conformity with rules 2, 3, and 7 of Civil Rules of the Court.

The maximum figure, with respect to prosecution, by the plaintiff, for the value of the property and damages for the detention, where the return indicates that the officer could not get possession of the goods and chattels, is changed from "$1,000" to "$10,000", to conform the provision with section 11–961 herein, relating to civil jurisdiction of the Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Damages for value and detention

Judgment giving seller under lease-purchase contract for household furnishings possession of furnishings or their value at designated figure was invalid, where writ of replevin had been returned "No personal property found thereon to levy", and evidence as to value of the property was insufficient. *P. Becton* v. *Walker-Thomas etc.* (D.C. App. 1963, 192 A. 2d 125).

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ but prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D.C. Mun. App. 1947, 50 A. 2d 815).

§ 16–3735. Publication against defendant.

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court, subject to section 13–340 as to mailing notice, may order that the defendant appear to the action by a fixed day, and cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for defendant's appearance. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–727 (Mar. 3, 1901, ch. 854, § 15, 31 Stat. 1192).

Section is based on part of section 11–727 of D.C. Code, 1961 ed. Remainder of section 11–727 is carried into section 16–3736 herein.

Words "subject to section 13–340 as to mailing notice," are inserted, because there was nothing in section 13–111 of D.C. Code, 1961 ed., from which section 13–340 herein was derived, which indicated that that section did not also apply to civil actions in the Municipal Court (now the Court of General Sessions). See section 16–1806 of D.C. Code, 1961 ed., which is carried into section 16–3706 herein.

Changes are made in phraseology.

§ 16–3736. Default.

If, after notice as provided by section 16–3735, the defendant fails to appear, the court may proceed, as in the case of default after personal service, to render judgment for the property in favor of the plaintiff. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–727 (Mar. 3, 1901, ch. 854, § 15, 31 Stat. 1192).

Section is based on part of section 11–727 of D.C. Code, 1961 ed. Remainder of section 11–727 is carried into section 16–3735 herein.

Changes are made in phraseology.

§ 16–3737. Retention of property by marshal—Sufficiency of undertaking, quashing writ, and return of property.

Property taken by the marshal under a writ of replevin issued pursuant to this subchapter shall be retained by him for three days, exclusive of Sundays and legal holidays, before delivering it to the plaintiff, in order that the defendant or other persons claiming an interest in the property may present objections to the court to the sufficiency of the security on the undertaking or the jurisdiction of the court. If the court deems the undertaking insufficient, it may direct the marshal to retain the property for a further short time, to be designated by the court, until an undertaking to be approved by it is filed, in default of which the marshal shall return the property to the person from whom it was taken. If it appears to the court that the property is of the value of over $10,000, the court shall quash the writ of replevin and direct the property to be returned to the party out of whose possession it was taken. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–729 (Mar. 3, 1901, ch. 854, § 17, 31 Stat. 1192; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

The amount of "$1,000" is changed to "$10,000". See section 11–961 herein.

Changes are made in phraseology.

§ 16–3738. Motion for return of property—Procedure—Objection to sufficiency of security.

Section 16–3708 is also applicable to actions of replevin brought pursuant to this subchapter. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–730 (Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312).

Changes are made in phraseology.

§ 16–3739. Determination and measure of plaintiff's damages.

Whether, in an action of replevin pursuant to this subchapter, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service, the plaintiff's damages shall be the full value of the goods, not to exceed $10,000, if eloigned by the defendant, and damages for the detention thereof, and judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §11–731 (Mar. 3, 1901, ch. 854, § 18, 31 Stat. 1192; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Words "the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court," are substituted for "the defendant plead and the issue joined be found against him, or his plea be held bad,", for the purpose of conforming the provisions, or rendering them more in consonance, with the Civil Rules of the Court. See, particularly, rules, 7, 12, 41, and 55 thereof. For jury trials in civil cases in the Court of General Sessions, waiver thereof, determination of damages in cases tried without a jury, etc., see section 13–502 herein, and rules 38 and 53 of the Civil Rules of the Court.

The amount of "$1,000", with respect to maximum damages, is changed to "$10,000", in view of the present civil jurisdiction of the Court of General Sessions. See section 11–961 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence 1
Instructions 2
Judgment for value and detention 3
Right to possession 4

1. Evidence

Testimony of witness that, when he took check drawn by defendant's husband, now deceased, to order of cash to bank and had it cashed for him, defendant's husband stated that he intended to use the money to buy furniture from third party was inadmissible as part of "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1947, 49 A. 2d 913).

Evidence failed to show that refrigerating equipment was sold and installed by plaintiff upon false representations by owner of one of defendant companies concerning his own credit standing or that of his company or as to leasing business to other defendant company, so as to authorize plaintiff to recover the equipment in replevin suit. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D.C. Mun. App. 1948, 61 A. 2d 632).

2. Instructions

Defendant's instruction that question for jury to determine was whether plaintiff had shown by a fair preponderance of evidence that on date she brought replevin suit she was entitled as against all the world to immediate and exclusive possession of the furniture which was subject of the suit was properly modified by substituting for the words "all the world" the words "the defendant." *Jackson* v. *Goode* (D.C. Mun. App. 1947, 49 A. 2d 913).

3. Judgment for value and detention

Judgment giving seller under lease-purchase contract for household furnishings possession of furnishings or their value at designated figure was invalid, where writ of replevin had been returned "No personal property found thereon to levy", and evidence as to value of the property was insufficient. *P. Becton* v. *Walker-Thomas etc.* (D.C. App. 1963, 192 A. 2d 125).

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ but prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D.C. Mun. App. 1947, 50 A. 2d 815).

4. Right to possession

Testimony as to statements made by defendant's deceased husband that he bought the property in controversy in replevin suit from certain person was not admissible as part of the "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1947, 49 A. 2d 913).

In replevin suit it is not necessarily the title which is in issue but merely the right to possession as between the parties. *Id.*

If buyer obtains by fraud the seller's assent to transfer ownership of goods the seller may sue for value thereof or at his election may rescind and sue to regain title or possession, and replevin is a proper procedural remedy to test issue of the right to possession. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D.C. Mun. App. 1948, 61 A. 2d 632).

§ 16–3740. Judgment for defendant and determination of damages.

If the issue in an action of replevin pursuant to this subchapter is found for the defendant, or the

plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant, with damages for their detention, or, on failure, that the defendant recover from the plaintiff and his surety the damages sustained by him. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-732 (Mar. 3, 1901, ch. 854, § 19, 31 Stat. 1193).

Words "or judgment is rendered against plaintiff on proper motion under rules of court," are inserted after "prosecute his suit,", for the purpose of conforming the provisions, or rendering them more in consonance, with the Civil Rules of the Court. See, particularly, rules 12, 41, and 56 thereof.

With respect to damages, words at end of section 11-732 of D.C. Code, 1961 ed., "to be assessed by the court" are omitted, as there are jury trials in the Court of General Sessions, unless waived. See section 13-502 herein, and rule 38 of the Civil Rules of the Court. For determination, by reference, of damages in cases tried with or without a jury, see rules 53 thereof.

Changes are made in phraseology.

Chapter 39.—SMALL CLAIMS AND CONCILIATION PROCEDURE IN COURT OF GENERAL SESSIONS

Sec.

16-3901. Practice—Applicability of other laws and rules of court.
16-3902. Commencement of action—Form of statement—Preparation by clerk—Notice and service—Costs—Default—Memorandum to plaintiff.
16-3903. Fees and costs—Waiver.
16-3904. Set-off or counterclaim—Pleading—Retention of jurisdiction.
16-3905. Jury trial—Demand—Assignment to regular branch.
16-3906. Pre-trial settlement—Trial—Procedure—Default—Dismissal or nonsuit—Other disposition.
16-3907. Judgment—Stay—Installment payments—Enforcement.
16-3908. Judgment for wages—Oral Examination—Payment.
16-3909. Award of costs.
16-3910. Other rights of judgment creditor.

§ 16-3901. Practice—Applicability of other laws and rules of court.

All provisions of law relating to the District of Columbia Court of General Sessions and the rules of court apply to the practice in the Small Claims and Conciliation Branch of the court as far as they may be made applicable and are not in conflict with this chapter or chapter 13 of Title 11, or with the rules prescribed pursuant to section 13-101(c). In case of conflict, this chapter and chapter 13 of Title 11 and the rules so prescribed control. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 17-751a, 11-814 (Mar. 5, 1938, ch. 43, § 14, 52 Stat. 106; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11-751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to District of Columbia Court of General Sessions.

Changes are made in phraseology.

For jurisdiction of the Small Claims and Conciliation Branch of the Court of General Sessions, see section 11-1341 herein. For the Branch's authority to settle disputes by arbitration and conciliation, irrespective of the amount involved, see section 11-1342 herein.

The provisions of section 11-814 of D.C. Code, 1961 ed., on which this revised section is based, are substantially repeated in rule 27 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch.

§ 16-3902. Commencement of action—Form of statement—Preparation by clerk—Notice and service—Costs—Default—Memorandum to plaintiff.

(a) Actions shall be commenced in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The clerk of the Branch shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the Branch, but his services are not available to a corporation, partnership, or association, in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law, or by registered mail or by certified mail with return receipt, or by a person not a party to or otherwise interested in the action especially appointed by the judge for that purpose.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall inclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned, the clerk shall attach it to the original statement of claim, and it constitutes prima facie evidence of service upon the defandant.

(c) When notice is served by a private individual, as provided by subsection (a) of this section, he shall make proof of service by affidavit before the clerk, showing the time and place of the service.

(d) When notice is served by the marshal, or by registered mail or by certified mail, the actual cost of service is taxable as costs. When notice is served by an individual, the cost of service, if any, is not taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in courthouse) (Address of court)

Washington, D.C.

Plaintiff	
Address	No. ———
vs.	
Defendant	

STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:)

DISTRICT OF COLUMBIA, *ss:*

———————— being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

————————.

Plaintiff (or agent)

Subscribed and sworn to before me this ——— day of ————, 19—.

————————.

Clerk (or notary public)

NOTICE

To: ————————

Defendant

————————

Home address

————————

Business address

You are hereby notified that———————— has made a claim and is requesting judgment against you in the sum of ———————— dollars ($———— ————), as shown by the foregoing statement. The Court will hold a hearing upon this claim on ———————— at ——m. in the Small Claims and Conciliation Branch (address of Court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL] ————————

Clerk of the Small Claims and Conciliation Branch, Court of General Sessions.

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, not less than 5 nor more than 15 days from the date of the filing of the action. Where, in a case controlled by another statute, a greater or lesser time for hearing is specified by the other statute, that specified time is controlling. All actions filed in the Branch shall be made returnable therein. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–805 (Mar. 5, 1938, ch. 43, § 5, 52 Stat. 103; June 11, 1960, Pub. L. 86–507, § 1(46), 74 Stat. 203; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77, August 5, 1963, Pub. L. 88–85, §§ 1, 2, 77 Stat. 117).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (e) words ", and shall be in lieu of any forms now employed and of any form of summons now provided by law", which followed "form", are omitted as obsolete and no longer necessary.

Changes are made in phraseology.

For supplemental provisions relating to the filing of actions, preparation of statement of claim, verification, notice, addresses of parties and attorneys, determination by judge of method of service, service and cost of service, see rules 3–9 of Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III). For supplemental provisions relating to methods of personal service, see rule 4(c) (1), (2), (3) of that court's regular civil rules (Section I), which is made applicable to actions in the Small Claims and Conciliation Branch by rule 28 of its rules for that branch. See, also, rule 30 of the court's rules for the branch, which repeats the forms of statement of claim, verification, and notice, and contains the forms of return of service, and rule 15 thereof, relating to pleading in that branch.

CROSS REFERENCES

Use of certified mail, see, § 14–506.

NOTES TO DECISIONS UNDER PRIOR LAW

Appearance to quash service 1
Practice of law 2
Purpose 3
Service by mail 4
Service, sufficiency of 5
Soldiers' and Sailors' Civil Relief Act 6
Who may serve 7

1. Appearance to quash service

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance", and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

2. Practice of law

Filling out and filing of blank forms necessary to commence an action in the small claims court by lay employees of an automobile association for its members does not constitute the unauthorized "practice of law", this section being intended to help layman in presenting small claims informally and providing that complaint may be verified by the plaintiff or his agent, who is not required to be an attorney. *American Automobile Ass'n* v. *Merrick* (1941, 117 F. 2d 23, 73 App. D.C. 151).

3. Purpose

The purpose of legislation establishing small claims court was to secure prompt and inexpensive adjudication of small claims free from technicalities of procedural law, and Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Interstate Bankers Corporation* v. *Kennedy* (1943, 33 A. 2d 165).

Process can only be served as provided by this section or by rules adopted pursuant to this section and registered mail may only be employed as a means of serving process when specifically authorized by law. *Craig* v. *Heil* (D.C. Mun. App. 1946, 47 A. 2d 871).

4. Service by mail

The presumption must be that Congress intended service by registered mail to be so made as to insure due

process of law. *Wise* v. *Herzog* (1940, 114 F. 2d 486, 72 App. D.C. 335).

5. Service, sufficiency of

Where record showed that registered letter intended to constitute service of process under rule of Small Claims and Conciliation Branch of Municipal Court was delivered by postman to defendant's wife, service was valid and justified a refusal to vacate default judgment, notwithstanding that defendant testified that his wife failed to either deliver or inform him of the registered letter. *Maktos* v. *Hill* (1943, 32 A. 2d 706).

Notice by registered mail delivered to wife of defendant, who was then serving in United States Army in time of war and who had been out of country for four months prior thereto, was not calculated to give reasonable notice or any notice to defendant, and attempted service was invalid and should have been quashed. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

6. Soldiers' and Sailors' Civil Relief Act

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 520, does not exempt defendant soldier from service of civil process. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

7. Who may serve

The act permits service by persons designated for that purpose by the court. *Wise* v. *Herzog* (1940, 114 F. 2d 486, 72 App. D.C. 335).

§ 16-3903. Fees and costs—Waiver.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions shall be not more than $1. Other fees shall be as the court prescribes. The judge sitting in the Branch may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the Branch shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "in forma pauperis" may not be employed in the Branch. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the Branch while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the Branch. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11-807 (Mar. 5, 1938, ch. 43, § 7, 52 Stat. 105).

Section is based on all of section 11-807 of the D.C. Code, 1961 ed., except the last sentence thereof. That sentence is carried into section 16-3909 herein.

Changes are made in phraseology.

For supplemental provisions relating to fees and costs and waiver and award of costs, see rules 12, 13, and 29 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III), and rule 85 of the Court's regular civil rules (Section I).

Cross Reference

Fees and costs, generally, see § 15-701 et seq.

§ 16-3904. Set-off or counterclaim—Pleading—Retention of jurisdiction.

If the defendant, in an action pursuant to this chapter, asserts a set-off or counterclaim, the judge may require a formal plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims and Conciliation Branch as provided by section 11-1341 but within the jurisdictional limit of the court as provided by section 11-961, the action shall nevertheless remain in the Branch and be tried therein in its entirety. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11-809 (Mar. 5, 1938, ch. 43, § 9, 52 Stat. 105).

For supplemental provisions relating to set-off or counterclaim, see rule 15 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Motion to strike

Where plaintiff in action on wage claim in small claims branch of Municipal Court filed a counterclaim seeking damages of $3,000 for libel and slander, counterclaim became subject to motion to strike for want of jurisdiction, or court on its own motion should have noticed its lack of jurisdiction and should have stricken the counterclaim. *1425 F St. Corp.* v. *Jardin* (D.C. Mun. App. 1947, 53 A. 2d 278).

§ 16-3905. Jury trial—Demand—Assignment to regular branch.

In a case filed or pending in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the regular branch of the civil division of the Court under the procedure provided for jury trials. (Dec. 23, 1963, 77 Stat. 610. Pub. L. 88-241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11-751a, 11-818 (Mar. 5, 1938, ch. 43, § 18, 52 Stat. 107; Oct. 23, 1962, Pub. L. 87-873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77).

Section 11-751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11-751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "the regular branch of the civil division" are substituted for "one of the regular branches", to follow more closely the present organization of the Court of General Sessions. See section 11-901 herein and revision note thereunder.

Changes are made in phraseology.

For supplemental provisions relating to demands for jury trials in actions brought in the Small Claims and Conciliation Branch of the Court of General Sessions, see rule 17 of the court's rules governing that branch (Section III). For provisions relating to jury trials in the regular branch of the civil division of the court, see section 13-702 herein, and rule 38 of the court's regular civil rules. See, also, chapter 23 of Title 11 herein.

§ 16-3906. Pre-trial settlement—Trial—Procedure—Default—Dismissal or nonsuit—Other disposition.

(a) On the return day specified by subsection (g) of section 16-3902, or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case pursuant to this chapter, the judge shall make an earnest effort to settle the controversy by conciliation. If he fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits pursuant to subsection (b) of this section.

(b) The parties and witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by section 16-3902(f), or under rules of court, or on ex-parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice requires. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11-808 (Mar. 5, 1938, ch. 43, § 8, 52 Stat. 105).

Changes are made in phraseology.

For supplemental provisions relating to trial procedure in the Small Claims and Conciliation Branch of the Court of General Sessions, see rule 14 of the court's rules governing that branch (Section III).

NOTES TO DECISIONS UNDER PRIOR LAW

Default judgment, setting aside 2
Discretion 3
Dismissal 4
Duty of judge 5
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Substantial justice 7

1. Generally

In small claims branch of Municipal Court, trial judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence except those relating to privileged communications. *Hodgkins* v. *Beckner* (1943, 32 A. 2d 113).

2. Default judgment, setting aside

Where at time plaintiff obtained default judgment for purchase price of a fur coat, there was withheld from the court the information that purchaser's action in Small Claims Court against plaintiff to recover payments made on the coat had been continued that same day, setting aside the default judgment even after expiration of the term was proper. *Marvin's Credit* v. *Kitching* (D.C. Mun. App. 1944, 34 A. 2d 866).

The determination of a motion to vacate a default judgment on basis of affidavits instead of taking testimony in open court is a matter resting largely in the discretion of the trial court. *Id.*

3. Discretion

In action in Small Claims Branch of Municipal Court, presiding judge abused his discretion in refusing to grant counsel for plaintiff a 30-minute continuance to obtain attendance of witness and dismissing action for want of prosecution upon refusal of counsel to take a nonsuit. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

4. Dismissal

Summary dismissals in the small claims branch of Municipal Court without a full hearing from both sides are not justified save in exceptional cases. *Hodgkins* v. *Beckner* (943, 32 A. 2d 113).

Where each plaintiff sought recovery of $50 on theory that each had delivered $50 to defendant on his undertaking to acquire title to an apartment house, and that defendant's resale of apartment house obligated him to return the sums received from plaintiffs, dismissal of the action by small claims branch of Municipal Court without hearing defendant's testimony was not justified by record. *Id.*

5. Duty of judge

The trial judge of small claims branch of Municipal Court is required, prior to trial, to make earnest effort to settle controversy by conciliation, and to elicit from defendant or his attorney a statement regarding nature of defense, but, if such effort fails judge must conduct trial in manner as to do substantial justice. *Hodgkins* v. *Beckner* (1943, 32 A. 2d 113).

Small Claims Court, by ordering action on a note for trial without ascertaining whether defendants claimed a defense, and without making any effort to settle controversy by conciliation, violated § 11-801 et seq. establishing and prescribing procedure in such court and Small Claims Rule 14c. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

Under this section providing for conduct of trial so as to do "substantial justice" in small claims and conciliation branch of Municipal Court, where payee on note given for horseback riding instructions failed to perform, in action on notes judge of small claims court could not limit recovery by holders in due course to unpaid balance less discount charged by holders for purchase of notes, by ignoring substantive law rule that holder in due course of negotiable instrument was entitled to payment of full amount. *Id.*

An order of the Municipal Court for the District of Columbia, Civil Division, dismissing plaintiff's second amended particulars of demand on ground that relief demanded was less than minimum jurisdiction of court, was improper, where amount claimed by plaintiff in good faith in bill of particulars exceeded jurisdictional amount. *Goldberg* v. *Roumel* (D.C. Mun. App. 1945, 40 A. 2d 253).

Summary dismissal by Municipal Court of Class B debt actions, which are claims for more than $50 but not more than $500, and which may be brought by filing a bill of particulars, is not to be encouraged. *Id.*

Conciliation procedure in small claims cases is made mandatory by this section and court rules, and, before ordering any such case for trial, presiding judge is required to elicit from defendant the nature of his defense, and make a real, and not merely a perfunctory, effort to settle controversy by conciliation. *Id.*

6. Evidence

Even though this section provided that judge should not be bound by statutory provisions or rules of practice, procedure, pleading, or evidence, police report, which contained conclusions of reporting officers and was highly prejudicial to plaintiff, was not admissible in evidence. *Levin* v. *Green* (D.C. Mun. App. 1954, 106 A. 2d 136).

Where tenant was compelled to pay water bill which accrued during a prior tenancy, and thereafter sought reimbursement from prior tenant, water bill prepared by official charged with duty of keeping records and collecting charges for water services was admissible under this section providing for conduct of trial in small claims and conciliation branch of Municipal Court so as to do substantial justice, and made a prima facie case. *Simmons* v. *Quick* (D.C. Mun. App. 1944, 37 A. 2d 656).

7. Substantial justice

Under this section providing that judge of small claims conciliation branch of Municipal Court should conduct trial so as to administer substantial justice between the parties, "substantial justice" is justice administered according to the rules of substantive law, notwithstanding errors of procedure which do not deprive litigants of substantive rights. *Interstate Bankers Corporation* v. *Kennedy* (1943, 33 A. 2d 165).

§ 16-3907. Judgment—Stay—Installment payments—Enforcement.

When judgment is to be rendered in an action pursuant to this chapter and the party against whom it is to be entered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such

periods, and upon such terms, as seems just in the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that the party has failed to meet an instalment payment without just excuse, the stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided by this section, the party in whose favor the judgment has been entered may avail himself of all remedies otherwise available in the District of Columbia Court of General Sessions for the enforcement of the judgment. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–811 (Mar. 5, 1938, ch. 43, § 11, 52 Stat. 106; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

For supplemental provisions relating to entry of judgment, stay, installment payments, exemptions, and oral examination of garnishee, see rules 18–23 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

NOTES TO DECISIONS UNDER PRIOR LAW

1. Stay of execution

Power granted to Small Claims Branch of Municipal Court for the District of Columbia to stay execution on a judgment and permit installment or periodical payments is limited to the time when judgment is to be rendered and cannot be exercised after judgment has been rendered and execution issued. *Royal Credit Co., Inc.* v. *Wabash Jr.* (D.C. Mun. App. 1960, 162 A. 2d 493).

Where seller obtained an attachment based on a default judgment from Small Claims Branch against buyer for price of merchandise and, under attachment, seized credits in the hands of buyer's employer, Small Claims Branch had no authority to quash attachment and order a conditional stay of execution. *Id.*

§ 16–3908. Judgment for wages—Oral examination—Payment.

When a judgment rendered in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–812 (Mar. 5, 1938, ch. 43, § 12, 52 Stat. 106).

Changes are made in phraseology.

For supplemental provisions relating to judgments for wages, oral examination, etc., see rule 25 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

NOTES TO DECISIONS UNDER PRIOR LAW

1. Personal services

Under rule 19 of the small claims branch of Municipal Court that the judge shall, upon motion, order the appearance of judgment debtor for examination as to financial ability to pay judgment based on claim for wages or personal services, the expression "personal services" should not be given a wider meaning than the word "wages" and does not include professional services rendered by a dentist, a physician, or an attorney at law. *Price* v. *Quill* (D.C. Mun. App. 1946, 46 A. 2d 311).

§ 16–3909. Award of costs.

In the action pursuant to this chapter, the award of costs is in the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–807 (Mar. 5, 1938, ch. 43, § 7, 52 Stat. 105).

Section is based on last sentence of section 11–807 of D.C. Code, 1961 ed. Remainder of section 11–807 is carried into section 16–3903 herein.

Changes are made in phraseology.

For supplemental provisions relating to the award of costs, and limitations on allowance of attorney fees, see rules 16 and 24 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

§ 16–3910. Other rights of judgment creditor.

Except as otherwise provided by this chapter, or in the rules prescribed pursuant to section 13–101(c), a party obtaining a judgment in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions is entitled to the the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–819 (Mar. 5, 1938, ch. 43, § 19, 52 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

Chapter 41.—SURETIES

Sec.
16–4101. Relief from suretyship—Counter security, or bond—Removal of officer or fiduciary from office.
16–4102. Subrogation of surety satisfying judgment.

§ 16–4101. Relief from suretyship—Counter security, or bond—Removal of officer or fiduciary from office.

When the surety, or his personal representatives, of an officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond apprehends himself to be in danger of suffering from the suretyship, and petitions the court to be relieved from the suretyship, or that the court require the officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him. If he fails to do so by a day named, the court may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete

the duties of his office or trust, and may thereupon, order him to deliver over to his successor all the trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with the order by attachment. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–2001 (Mar. 3, 1901, ch. 854, § 1572, 31 Stat. 1424).

Minor changes are made in phraseology.

Cross References

Bonds generally, see § 28–2401 et seq.

Counter security by executors and administrators, see § 20–109.

Counter security by guardians, see § 21–122.

§ 16–4102. Subrogation of surety satisfying judgment.

Where a person recovers a judgment or money decree against the principal debtor and a surety or indorser, and the judgment is satisfied by the surety or indorser, the latter may have the judgment or money decree entered by the clerk to his use and have execution in his own name against the principal, and where a judgment or money decree is rendered against several sureties and one of them satisfies the whole debt, the surety satisfying the judgment may have the judgment or decree entered to his use, have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him. On the motion of the surety so paying the entire debt and notice to the other sureties, the court may determine for what amount execution shall issue against each of the other sureties. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–2002 (Mar. 3, 1901, ch. 854, § 1573, 31 Stat. 1424).

Changes are made in phraseology.

Cross Reference

Setoff, see § 13–503.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Foreign judgments

In action by surety, which had given New York cost bond, against principal to recover loss sustained by surety because of payment of judgment for costs against principal, where New York court had jurisdiction of subject matter and of parties, final judgment awarding costs was required to be given complete effect under the "full faith and credit" clause of U.S. Const. Art. 4, § 1. *Lloyd* v. *U.S. Fidelity & Guaranty Co.* (1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U.S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U.S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U.S. 770, 88 L. Ed. 1595).

In action by surety, which had given New York cost bond, to recover loss sustained because of payment of judgment against principal for costs, trial court did not err in receiving in evidence certified copy of New York judgment for costs and canceled check evidencing payment of judgment by surety. *Id.*

In action by surety, which had given New York cost bond, against principal to recover loss sustained because of payment of judgment for costs against principal, record did not sustain defense of fraud and collusion in obtaining the judgment for costs. *Id.*

TITLE 17.—REVIEW

DISTRIBUTION TABLE

For disposition of former sections of this title, see table preceding Title II.

Chap. Sec.

1. United States Court of Appeals for the District of Columbia Circuit 17–101
3. District of Columbia Court of Appeals 17–301

Chapter 1.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Sec.

17–101. Appeal from District of Columbia Court of Appeals—Filing, form and contents of petition.

17–102. Procedure, generally, on appeal from District of Columbia Court of Appeals—Record—Rules of court.

17–103. Time for petitioning for allowance of appeal from District of Columbia Court of Appeals.

17–104. Determination of appeal from District of Columbia Court of Appeals.

§ 17–101. Appeal from District of Columbia Court of Appeals—Filing, form and contents of petition.

The petition for the allowance of an appeal from a judgment of the District of Columbia Court of Appeals shall be in writing and shall be filed with the clerk of the United States Court of Appeals for the District of Columbia Circuit. The contents of the petition shall conform with requirements that the United States Court of Appeals prescribes by rule. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

The text is actually taken, with changes in phraseology, from the second sentence of section 11–773 of D.C. Code, 1961 ed. The last sentence of section 11–772 thereof, cited above, made the procedure prescribed in section 11–773 applicable to petitions for the allowance of appeals from judgments of the Municipal Court of Appeals (now, District of Columbia Court of Appeals) given on appeals from orders and decisions of certain administrative agencies.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provisions of section 11–773 of D.C. Code, 1961 ed., fixing the time during which petitions for allowance of appeals may be filed is carried into section 17–103 herein. For remainder of sections 11–772 and 11–773, see other sections in this title, and tables.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Frivolous questions

Briefs, arguments and record on appeal at government expense from convictions for transporting female in interstate commerce for prostitution, and for accepting money from earnings of female engaged in prostitution for which defendant furnished a place, presented no legally non-frivolous questions, and required that convictions be affirmed. *N. Wisnick* v. *United States* (1963, 311 F. 2d 775, 114 U.S. App. D.C. 89).

§ 17–102. Procedure, generally, on appeal from District of Columbia Court of Appeals—Record—Rules of court.

The United States Court of Appeals for the District of Columbia Circuit may prescribe rules governing the:

(1) practice and procedure on petitions specified by section 17–101; and

(2) preparation of, and time for filing, the transcript of the record in such cases—

and may generally regulate all matters relating to appeals in such cases. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048).

The text is actually taken, with changes in phraseology, from the third sentence of section 11–773 of D.C. Code, 1961 ed. For the reason for also citing section 11–772 thereof, see revision note under section 17–101 herein.

For remainder of sections 11–772 and 11–773 of D.C. Code, 1961 ed., see other sections in this title, and tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeals by Government 1
Pretrial order 2

1. Appeals by Government

Criminal appeals by the government in District of Columbia are not limited to categories set forth in special jurisdictional statute, although as to cases of the type covered by that statute, its explicit directions will prevail over general terms of District of Columbia Code. *Carroll* v. *United States* (1957, 77 S. Ct. 1332, 354 U.S. 394, 1 L. Ed. 2d 1442).

2. Pretrial order

Pretrial order suppressing evidence of a recording and a transcription of a telephone conversation, did not have a final and irreparable effect on rights of party in prosecution for perjury nor was it a "final disposition" of a claimed right and order was not appealable. *United States* v. *Stephenson* (1955, 223 F. 2d 336, 96 U.S. App. D.C. 44).

§ 17–103. Time for petitioning for allowance of appeal from District of Columbia Court of Appeals.

Petitions for the allowance of appeals from judgments of the District of Columbia Court of Appeals shall, in each case, be filed, as provided by this chapter, within ten days after entry of the judgment from which an appeal is desired. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

The text is actually taken, with changes in phraseology, from part of the second sentence of section 11–773 of D.C. Code, 1961 ed. For reason for also citing section 11–772 thereof, see revision note under section 17–101 herein.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of

this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of section 11–772 and 11–773 of D.C. Code, 1961 ed., see other sections in this title, and tables.

§ 17–104. Determination of appeal from District of Columbia Court of Appeals.

If the United States Court of Appeals for the District of Columbia Circuit allows an appeal pursuant to section 11–321 and this chapter, it shall review the record on appeal, and shall affirm, modify, vacate, set aside, or reverse the judgment, and may remand the cause and direct the entry of such appropriate judgment or order, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–772, 11–773 (Apr. 1, 1942; ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048).

The text is actually taken from the fourth sentence of section 11–773 of D.C. Code, 1961 ed., and is reworded to follow the broader and more comprehensive language of section 2106 of Title 28, United States Code, which in all probability already embraces within its scope the determination, by the United States Court of Appeals for the District of Columbia, of appeals from the District of Columbia Court of Appeals.

For reason for also citing, above, section 11–772 of D.C. Code, 1961 ed., see revision note under section 17–101 herein, and for remainder of section 11–772 and 11–773, see other sections in this title, and tables.

Chapter 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

Sec.

17–301. Applications for allowance of appeals from certain Court of General Sessions judgments—Hearing—Effect of denial.
17–302. Regulations of appeals—Record—Costs.
17–303. Appeals from administrative orders and decisions—Petition—Record—Procedure.
17–304. Stay upon application for review of, or pending appeal from, administrative order or decision.
17–305. Scope of review.
17–306. Determination of appeals.
17–307. Time for taking or applying for allowance of appeals.

§ 17–301. Applications for allowance of appeals from certain Court of General Sessions judgments—Hearing—Effect of denial.

(a) The application for the allowance of an appeal from a judgment of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, or from a judgment of the criminal division of that court where the penalty imposed is less than $50, provided for by section 11–741(c), shall be on a standard form, in simple language, prescribed by the Court of General Sessions. If the appellant is not represented by counsel, the clerk of the Court of General Sessions shall prepare the application in his behalf.

(b) The application provided for by subsection (a) of this section shall be filed in the District of Columbia Court of Appeals within the time limit prescribed by section 17–307(b), and shall be promptly presented by the clerk of that court to the chief judge and the associate judges thereof for their consideration. When any one of them is of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal. It shall be given a preferred status on the calendar, and heard in the same manner as other appeals in the court. When all the judges are of the opinion that an appeal should be denied, the denial shall stand as an affirmance of the judgment of the trial court, and there shall be no further appeal. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961, ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is derived from part of subsec. (a) of section 11–772 of D.C. Code, 1961 ed., with changes in phraseology and arrangement.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In subsec. (a), "criminal division" is substituted for "criminal branch". See section 11–901 herein and revision note thereunder.

A second paragraph of subsec. (a) of section 11–772 provided that "After the effective date of this subchapter [subchapter III of chapter 7 of Title 11 of that Code, in which said section 11–772 was set out], no writs of error or appeals, except in respect of judgments theretofore rendered, shall be granted by the United States Court of Appeals for the District of Columbia to the said Municipal Court or to the said Juvenile Court". This paragraph is omitted as obsolete.

For remainder of section 11–772 of D.C. Code, 1961 ed., see other sections in this title, and tables.

§ 17–302. Regulation of appeals—Record—Costs.

The District of Columbia Court of Appeals may regulate, generally, all matters relating to appeals, whether in the District of Columbia Court of Appeals or in the court below. It may prescribe by rules what part of the proceedings in the court below shall constitute the record on appeal, and may require that the original papers, instead of copies thereof, be sent to it. It may not require that the record or briefs on appeal be printed. If they are printed, the cost of printing may not be taxed as costs in the case. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section consolidates subsec. (b) of section 11–772 of D.C. Code; 1961 ed., with section 11–767 thereof which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11–741 herein. For remainder of section 11–772, see other sections in this title, and tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

NOTES TO DECISIONS

1. Record on appeal

Record in juvenile court proceeding for determination of paternity and support of child disclosed no reason requiring reversal of judgment because of several years' delay in trial due to congested court calendar, where no

application was made to advance case for hearing and at no time was appellant in custody. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

§ 17–303. Appeals from administrative orders and decisions—Petition—Record—Procedure.

(a) An appeal from an order or decision of an administrative agency, as provided for by section 11–742, is commenced by filing in the District of Columbia Court of Appeals, within the time prescribed pursuant to section 17–307(a), the written petition for review provided by section 11–742(c). Upon the filing of the petition, the clerk of the court shall forthwith, by mail, serve a copy thereof upon the agency affected by the petition. After receipt of the copy of the petition, the agency shall certify and file in the court the original papers comprising the record or any supplementary record, or certified copies of the papers. Upon the filing of the papers, the clerk shall immediately notify the petitioner of the filing.

(b) The District of Columbia Court of Appeals may by rule prescribe:

(1) the form and contents of the petition provided for by this section; and

(2) the time within which the agency affected by the petition shall certify and file the original papers or certified copies thereof as provided by this section—

and regulate generally all matters relating to proceedings on an appeal referred to in this section. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat 78).

Section is derived, with changes in phraseology and arrangement, from the second sentence, part of the third sentence, and the fourth sentence, of subsec. (f) of section 11–772 of D.C. Code, 1961 ed.

Section 11–711a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of section 11–772, see other sections in this title, and tables.

§ 17–304. Stay upon application for review of, or pending appeal from, administrative order or decision.

(a) An application for review, or pendency of an appeal, provided for by section 17–303, does not operate as a stay of the order or decision from which the appeal is taken:

(1) in any case where, under existing law, a stay may not be granted; or

(2) in any other case unless so ordered by the Board of Commissioners of the District of Columbia, or by the District of Columbia Court of Appeals as provided by subsection (b) of this section.

(b) For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status or rights pending conclusion of the review proceedings provided for by section 17–303. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 7, 77 Stat. 78).

Section is derived, with changes in phraseology and arrangement, from the proviso in subsec. (f) of section 11–772 of D.C. Code, 1961 ed., down to the second semicolon. For remainder of section 11–772, see other sections in this title, and tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

§ 17–305. Scope of review.

(a) In considering an order or judgment of a lower court or any of its branches, brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

(b) The District of Columbia Court of Appeals shall hear and determine appeals from orders or decisions of administrative agencies upon the record of proceedings before the appropriate agency to be certified to the court under rules or instructions as the court from time to time prescribes. In such cases, it shall limit its review to those issues of law or fact that are subject to review on appeal under applicable provisions of existing law. If there is no statutory limitation, the court shall determine the appeal by rules of law which define the scope and limitations of review of administrative proceedings. Under the rules, by way of elaboration and not limitation, the court may:

(1) as far as necessary to decision and where presented to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action; and

(2) hold unlawful and set aside agency action findings and conclusions found to be:

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence or facts in the record of the proceedings before the court; or

(F) unwarranted by the facts.

In making the determinations as provided by this subsection, the court shall take account of prejudicial error. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch.

1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section consolidates part of the second sentence and all of the third sentence of subsec. (c) of section 11–772 of D.C. Code, 1961 ed., and part of subsec. (f) of section 11–772, with section 11–767 of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11–741 herein. For remainder of section 11–772, see other sections in this title, and tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

§ 17–306. Determination of appeals.

The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court or any branch thereof, or any order or decision of an administration agency, lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section consolidates part of the second sentence of subsec. (c) of section 11–772 of D.C. Code, 1961 ed., and part of the fifth sentence of subsec. (f) of section 11–772, with section 11–767, of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See, revision note under section 11–741 herein.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In connection with the review of orders or judgments of lower courts, subsec. (c) of section 11–772 of D.C. Code, 1961 ed., provided that the Municipal Court of Appeals (now, the District of Columbia Court of Appeals) "shall affirm, reverse, or modify the order or judgment in accordance with law". In connection with the review of orders or decisions of certain administrative agencies (see section 11–742 herein), subsec. (f) of section 11–772 provided that the Court "shall have the power to affirm, modify, or set aside the decision or order complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require". The provisions, as consolidated in this section, are patterned upon section 2106 of Title 28, United States Code, and are more comprehensive of the Court's powers in the determination of appeals.

Subsec. (d) of section 11–772 of D.C. Code, 1961 ed., provided that section 11–772 "shall not apply to any judgments rendered prior to the effective date of this subchapter [subchapter III of chapter 7 of Title 11 of the Code, in which section 11–772 was set out]". This provision is omitted as obsolete. For remainder of section 11–772, see other sections in this title, and tables.

§ 17–307. Time for taking or applying for allowance of appeals.

(a) Except as provided by subsection (b) of this section, the time during which an appeal may be taken pursuant to section 11–741 or 11–742 may be fixed by rules of the District of Columbia Court of Appeals.

(b) Applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, and from judgments in the criminal division of that court where the penalty imposed is less than $50, specified by section 11–741(c), shall, in each case, be filed in the District of Columbia Court of Appeals within three days from the date of judgment. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 1.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat, 78).

Section consolidates with changes in phraseology, part of the fifth sentence of subsec. (a) of section 11–772 of D.C. Code, 1961 ed., and part of the third sentence of subsec. (f) of section 11–722, with section 11–767 of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11–741 herein.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The fifth sentence of subsec. (a) of section 11–772 of D.C. Code, 1961 ed., which related to applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the Municipal Court (now, the Court of General Sessions), and from judgments of the Criminal Branch of that court where the penalty imposed is less than $50, is carried into subsec. (b) of this section.

Section 11–772 of D.C. Code, 1961 ed., contained no specific provision prescribing the time during which appeals from other judgments or orders of the Municipal Court (now, the Court of General Sessions) may be taken, or empowering the Municipal Court of Appeals (now, the District of Columbia Court of Appeals) to fix the time by rule. However, the power of the latter court to fix the time by rule was implied in subsec. (b) of section 11–772, which is carried into section 17–302 herein. Therefore, this power is specifically provided for in subsec. (a) of this section, along with the power of the court to fix the time, by rule, during which appeals may be taken from orders or decisions of certain administrative agencies (section 11–742 herein). The latter power was specifically provided for in the third sentence of subsec. (f) of section 11–772.

In subsec. (b), "criminal division" is substituted for "Criminal Branch". See section 11–901 herein and revision note thereunder.

For remainder of section 11–772 of D.C. Code, 1961 ed., see other sections in this title, and tables.

PART III

PROBATE LAW AND PROCEDURE

TITLE 18—DECEDENTS' ESTATES AND THEIR DISTRIBUTION.
TITLE 19—WILLS.
TITLE 20—ADMINISTRATORS, EXECUTORS, AND COLLECTORS.
TITLE 21—GUARDIAN AND WARD, AND INSANE PERSONS.

TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

Chapter 1.—LAW OF DESCENTS

§ 18–101. Course of descents generally.

On the death of any person seized of or entitled to an interest in an estate in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's surviving spouse, if any, and kindred, who according to the laws of the District of Columbia now or hereafter in force relating to the distribution of the personal property of intestates, would be entitled to the surplus personal property of such intestate, if he or she had died a resident of the District of Columbia and possessed of such surplus personalty; and such surviving spouse and kindred shall take as tenants in common in the same proportions as are or shall be fixed by such laws relating to personal property. Subject to the right of dower, such real property shall be liable, in the event of insufficiency of the personal property, for the payment of the intestate's funeral expenses, debts, costs of administration, and estate, inheritance, and succession taxes in the same manner and to the same extent as the personal property of such intestate. Should said lands, tenements, or hereditaments be sold under a decree of a court having jurisdiction over the same, then it shall be unnecessary to secure the consent of said widow or surviving husband to said sale, unless the widow elects to take her dower, if any, in all real estate whereof the husband, prior to November 29, 1957, was seized at any time during the marriage or the surviving spouse elects to take the right of dower provided by section 18–201a as amended. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85–244, § 1; Sept. 14, 1961, 75 Stat. 515, Pub. L. 87–246, § 2).

AMENDMENT

1961—Act Sept. 14, 1961, amended section generally. For provisions of section prior to this amendment, see section as set out in main volume of the Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18–101, 18–201a, 18–204, 18–211 and 30–201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18–101, 18–201a, 18–211, 18–204 and 30–201) may be cited as the "Marital Property Rights Amendments of 1961."

REPEAL OF INCONSISTENT PROVISIONS

Section 7 of act Sept. 14, 1961, provided that: "Any provision of law inconsistent with the provisions and amendments of this Act [amending sections 18–101, 18–201a, 18–204, 18–211, and 30–201] is hereby repealed."

CROSS REFERENCES

Dower rights of husband and wife, see § 18–201a.

Distribution of death benefits of fraternal benefit association, see § 35–901.

Distribution of personal property, see §§ 18–701 to 18–723.

Distribution of proceeds of action for wrongful death, see § 16–2703.

Inheritance by adopted children, see §§ 16–511 to 16–513.

Renunciations, see § 18–211.

Chapter 2.—DOWER RIGHTS

Sec.
18–201a. Dower rights of husband and wife—Joint tenancies—All laws relating to the right of dower to be construed as applicable to both husband and wife.
18–204. Absent or incompetent spouse.
18–211. Renunciation of devises and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardian or fiduciaries—Renunciation deemed to have been made when nothing passes under bequest or devise—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

§ 18–201a. Dower rights of husband and wife—Joint tenancies—All laws relating to the right of dower to be construed as applicable to both husband and wife.

Every husband and wife shall acquire by virtue of the marriage a right of dower which shall be an inchoate estate for life in one-third of the real property owned by the other spouse at any time during the marriage, whether by legal or equitable title, and whether held by either spouse at the time of his or her death or not, and such estate, which shall have the same incidents as the common law estate of dower in force and effect in the District of Columbia immediately prior to November 29, 1957, shall be in lieu of any inchoate rights acquired by or which may have attached to the real estate of any husband or wife by virtue of the provisions of subsection (b) of this section, as such subsection was in effect immediately prior to the effective date of this amendment, and shall not operate to the prejudice of any claim for the purchase money of such lands. No such right of dower shall attach to any

lands held by any two or more persons as joint tenants while such tenancy exists; and all provisions of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, as amended, and all other laws in force in the District of Columbia relating to the right of dower and its incidents shall, on and after the effective date of this amendment, be construed to be applicable to both husband and wife. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85–244, § 3; Sept. 14, 1961, 75 Stat. 515, Pub. L. 87–246, § 3.)

REFERENCES IN TEXT

Subsection (b) referred to in text will be found in section 18–201a of the main volume.

Act of Mar. 3, 1901, referred to in text, relating to dower rights will be found generally set out in this title. For other provisions set out in different parts of the Code see distribution tables relating to act of Mar. 3, 1901, 31 Stat. 1189, in the main volume.

AMENDMENT

1961—Act Sept. 14, 1961, amended the section to read as above set out. The amendment restores the inchoate right of dower and makes the same applicable to both husband and wife. For provisions of section prior to this amendment see section as set out in main volume of Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18–101, 18–201a, 18–204, 18–211 and 30–201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18–101, 18–201a, 18–204, 18–211 and 30–201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

CROSS REFERENCE

Renunciations, see § 18–211.

§ 18–203. Forfeiture of dower by desertion and adultery of wife.

NOTES TO DECISIONS

1. Deserting widow's rights

District of Columbia statute setting forth no exceptions to widow's right to elect to take against will except where she by adulterous conduct is barred from claiming dower rights permitted widow to attack will although she had deserted testator, had filed divorce proceedings against him, was found to be the guilty party, and divorce was granted to testator, where he died less than six months after entry of decree. *In re Estate of S. D. Hanson* (1962, 210 F. Supp. 377).

§ 18–204. Absent or incompetent spouse.

Where any married person is a lunatic or insane, and has been so adjudicated by a court of competent jurisdiction and such adjudication remains in force, or where any married person has been absent or unheard of for seven years, the husband or wife, as the case may be, of such lunatic or insane or absent person may grant and convey by his or her separate deed, whether the same be absolute or by way of lease or mortgage, as fully as if he or she were unmarried, any real estate which he or she may have acquired since such adjudication or since the beginning of such absence. (Sept. 14, 1961, 75 Stat. 517, Pub. L. 87–246, § 5.)

AMENDMENT

1961—Act Sept. 14, 1961, amended section to read as above set out. The amendment makes the section applicable to both husband and wife.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18–101, 18–201a, 18–204, 18–211 and 30–201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18–101, 18–201a, 18–204, 18–211, and 30–201) may be cited as the 'Marital Property Rights Amendments of 1961'."

CROSS REFERENCES

Right of dower of husband and wife, see § 18–201a.
Renunciations, see § 18–211.
Renunciation of dower rights, see § 30–216.
Release of dower generally, see § 30–216.
Release of dower of insane person, see § 21–301.

§ 18–210. Devise or bequest to spouse.

NOTES TO DECISIONS

Renunciation after probate

Widow, who had petitioned for probate of husband's will and for letters testamentary, was not thereafter entitled to set aside former petition and resulting order for probate of will and for letters testamentary. *In re Estate of W. V. James, deceased* (1963, 221 F. Supp. 456).

§ 18–211. Renunciation of devises and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardians or fiduciaries—Renunciations deemed to have been made when nothing passes under bequest or device—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

(a) Subject to the provisions of section 18–212 a widow or surviving husband shall by such devise or bequest be barred of any statutory rights or interest she or he may have in the real and personal estate of the deceased spouse or the dower rights provided by section 18–201a, as the case may be, unless within six months after the will of the deceased spouse is admitted to probate, she or he shall file in the probate court a written renunciation to the following effect:

"I, A B, widow (or surviving husband of , late of , deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband (or wife) exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal property of my said spouse (except that in lieu of my legal share of the real property, I elect to take dower in all the real property of my deceased spouse to which such right is applicable).

(b) In similar manner, where the deceased spouse has died intestate of any real estate and letters of administration have been issued with respect to the estate of such deceased spouse, the surviving spouse shall be barred of the dower rights provided by section 18–201a, unless within six months after such letters of administration have been issued with respect to the estate of the deceased spouse, she or he shall file in the probate court a written renunciation of her or his legal share of such intestate real estate to the following effect:

I, A B, widow (or surviving husband) of , deceased, in lieu of my legal share of the real property of which my deceased spouse died intestate, do hereby elect to take dower in all the real

property of my deceased spouse to which such right is applicable.

(c) If, during said period of six months, a suit should be instituted to construe the will of the deceased spouse, the period of six months for the filing of such renunciation or election shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise. A renunciation or election may be made in behalf of any spouse unable to act for himself or herself by reason of infancy, incompetency, or inability to manage his or her property, by the guardian or other fiduciary acting for such spouse when authorized so to do by the court having jurisdiction of the person of such spouse. The time for renunciation by any spouse may be extended before its expiration by an order of the probate court for successive periods of not exceeding six months each upon petition showing reasonable cause and on notice given to the personal representative and to such other persons in such manner as the probate court may direct.

(d) In any case where the wife or husband has made no devise or bequest to the spouse, and in any case where nothing passes by any purported devise or bequest, the surviving spouse shall be deemed to have filed a written renunciation as provided in subsection (a) of this section (subject to his or her right to elect dower in lieu of the legal share of real estate within six months from probate of the will provided in subsection (b) of this section).

(e) By renouncing all claim to any and all devises and bequests made to her or him by the will of her husband or his wife pursuant to the provisions of subsection (a) of this section, or in the event that a renunciation shall be deemed to be effected pursuant to the provisions of subsection (d) of this section, the surviving spouse shall be entitled to such share or interest in the real and personal estate of the deceased spouse (including dower if elected in lieu of the legal share in the real estate) which she or he would have taken had the deceased spouse died intestate, except that in neither event shall the surviving spouse be entitled to more than one-half of the net estate bequeathed and devised by said will, or, if dower be elected, one-half of the net personal estate bequeathed and dower in the real estate devised.

(f) Notwithstanding any other provision of law now or heretofore in effect in the District of Columbia, any valid antenuptial or postnuptial agreement which shall have been entered into by the spouses shall govern and the provisions thereof shall determine the rights of the surviving spouse in the real and personal property of the deceased spouse, and the administration thereof, but nothing contained in this subsection shall prohibit any spouse from accepting the benefits of any devise or bequest made to him or her by the deceased spouse. (Aug. 31, 1957, 71 Stat. 561, Pub. L. 85–244, § 6; Sept. 14, 1961, 75 Stat. 516, Pub. L. 87–246, § 4.)

AMENDMENT

1961—Act Sept. 14, 1961, amended the section generally. For comparison with prior provisions of this section see section in main volume of the Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18–101, 18–201a, 18–204, 18–211 and 30–201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18–101, 18–201a, 18–204, 18–211, and 30–201) may be cited as the 'Marital Property Rights Amendment of 1961'."

CROSS REFERENCE

Right of dower of husband and wife, see § 18–201a.

NOTES TO DECISIONS

Deprivation of rights 7
Renunciation by administrator 13.50
Renunciation after probate 13.51
Taxes upon renunciation 15.50

7. Deprivation of rights

District of Columbia statute setting forth no exceptions to widow's right to elect to take against will except where she by adulterous conduct is barred from claiming dower rights permitted widow to attack will although she had deserted testator, had filed divorce proceedings against him, was found to be the guilty party, and divorce was granted to testator, where he died less than six months after entry of decree. *In re Estate of S. D. Hanson* (1962, 210 F. Supp. 377).

13.50. Renunciation by administrator

Right of surviving incompetent widow to renounce will of husband could not be exercised by her administrator after her death. *R. H. Payne et al.* v. *B. A. Newton, Jr., etc.* (1963, 323 F. 2d 621, 116 U.S. App. D.C. 319).

13.51. Renunciation after probate

Widow, who had petitioned for probate of husband's will and for letters testamentary, was not thereafter entitled to set aside former petition and resulting order for probate of will and for letters testamentary. *In re Estate of W. V. James, deceased* (1963, 221 F. Supp. 456).

Widow, who failed to file renunciation within specified statutory period, and who subsequently sought leave to withdraw prior petition for probate and for letters testamentary and declaration to effect that court order for probate of will was null and void enabling widow to renounce her interest under will, should have instead proceeded for order permitting renunciation and election as of date within statutory period, nunc pro tunc. *Id.*

15.50. Taxes upon renunciation

A widow who renounced will of her husband and elected to share in his estate as if he had died intestate could not claim such share in her husband's estate without diminution for Federal estate tax on theory of provisions in decedent's will. *G. B. Herson* v. *Mollye Mills ind; and as co-executrix of the estate of D. L. Herson, et al.* (1963, 221 F. Supp. 714).

Chapter 4.—INVENTORY OF ASSETS

§ 18–406. Exceptions to inventory.

REFERENCES IN TEXT

The section numbers 15–401 to 15–403 referred to in text, have been changed to 15–501 to 15–503, by act of Dec. 23, 1963, Pub. L. 88–241, effective Jan. 1, 1964, set out as titles 11 to 17.

Chapter 5.—CLAIMS OF CREDITORS

§ 18–512. Claims of executors and administrators to be passed by probate court.

NOTES TO DECISIONS

2. Submission to court

An executrix was precluded from asserting her claim to certain securities on theory that she was entitled thereto under a joint venture agreement with decedent, where executrix failed to submit her claim to the probate court, filed an account which omitted all reference

to her purported claim, and without authority of the court retained assets bequeathed by terms of the will to decedent's sister. *M. J. de Pingre* v. *M. Weisshappel* (1963, 322 F. 2d 415, 116 U.S. App. D.C. 202).

§ 18-517. Passing of claims not conclusive.

NOTES TO DECISIONS

1. Effect of passing claim

The probate court is without jurisdiction to compel an executor to pay a claim asserted against a decedent's estate. *J. F. Bird et al., Executors etc.* v. *C. B. Sullivan Jr.* (1963, 316 F. 2d 675, 115 U.S. App. D.C. 24).

A probate court's approval, however expressed, of a claim against an estate is in legal effect an order that claim will pass when paid, but if executor or administrator contests claim, probate court's order approving it is deprived of even evidential effect. *Id.*

Chapter 6.—SALE OF ASSETS

§ 18-602. Order for sale.

NOTES TO DECISIONS

5. Revocation of letters

Statute providing that letters of executor or administrator may be revoked if he shall sell, pledge or dispose of any property without previous order applies only to unauthorized disposal of salable property and not to improper payment of claims. *C. P. Henry* v. *J. A. Grimes, Jr.*, (1964, 334 F. 2d 550, —— U.S. App. D.C. ——).

Probate Court was not authorized to remove executor on ground that executor on his own initiative paid himself sum from assets of estate on account of his commission as executor and as fees for his services as attorney-in-fact for decedent before her death. *Id.*

Chapter 7.—DISTRIBUTION OF SURPLUS—BENEFICIARIES

§ 18-717. Escheatment.

NOTES TO DECISIONS

5.50. Soldiers' Home inmates

Inmate of United States Soldiers' Home in District of Columbia, retired from regular army, and a resident of District of Columbia, who died without legal heirs or next of kin, was a "soldier" within statute providing for funds for support of the Soldiers' Home, and United States rather than District of Columbia was entitled to escheat of his moneys. *District of Columbia* v. *Wolverton* (1961, 298 F. 2d 684, 112 U.S. App. D.C. 23).

TITLE 19.—WILLS

Chapter 1.—WILLS IN GENERAL

§ 19–103. Form of will—Witnesses—Alteration—Revocation.

NOTES TO DECISIONS

Promissory note 11.49
Republication 11.50
Revocation 12

11.49. Promissory note

Condition in note that if payee predeceased maker, outstanding balance of note would be deemed to have been paid did not render note invalid on ground that condition was attempt to make testamentary disposition contrary to statute of wills. *M. Nunnally* v. *J. F. Wilder* (1964, 330 F. 2d 843, 117 U.S. App. D.C. 397).

11.50. Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel* v. *American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

12. Revocation

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel* v. *American Security & Trust Co., Executor, et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

§ 19–108. Revival of will after revocation.

NOTES TO DECISIONS

Republication 2
Revocation 3

2. Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel* v. *American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

3. Revocation

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel* v. *American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

Instrument designated as "a" codicil, adding bequest and reaffirming will, which named bank as executor and trustee, did not revoke prior codicil naming testator's wife and daughter as coexecutrices. *Id.*

Chapter 2.—DEVISES BY WILL

Sec.
19–206. "Pour over" trusts.

§ 19–206. "Pour over" trusts.

(a) *Bequests or devises to trustee under, or in accordance with terms of, existing trusts.*—A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustee or trustees under, or in accordance with the terms of, a written inter vivos trust (including an unfunded life insurance trust, although the settlor has reserved any or all rights of ownership in the insurance contracts) which has been executed and is in existence prior to or contemporaneously with the execution of such will or codicil and is identified in such will or cocidil, without regard to the size or character of the corpus of such trust, or whether the settlor is the testator or a third person.

Such devise or bequest shall not be invalid because the trust is subject to amendment or modification or may be terminated or revoked after the will or codicil is executed (whether by the settlor or any other person or persons), nor because the trust instrument or any amendment thereto was not executed in the manner required by law for wills or codicils.

Unless the will or codicil otherwise provides—

(1) such devise or bequest shall not be invalid because the trust was amended or modified after the will or codicil was executed, and such devise or bequest shall be given effect in accordance with the terms of the trust as they appear in writing on the date of death of the testator, including any such amendment or modification;

(2) property passing under such devise or bequest shall be deemed to pass directly to the trustee or trustees of the inter vivos trust and shall become a part of the assets of such trust, and shall not be deemed held under a separate testamentary trust;

(3) an entire revocation of the trust prior to the death of the testator shall invalidate the devise or bequest even though such revocation was not effected in the manner provided by law for the revocation of wills and codicils.

(4) a termination of the trust, except by way of revocation, in accordance with the terms of said trust or by its exhaustion or by operation of law or otherwise shall not invalidate the devise or bequest.

(b) *Bequests or devises to trustee under, or in accordance with terms of, testamentary trusts.*—A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustee or trustees under, or in accordance with the terms of, a testamentary trust established under another valid will or codicil. Such devise or bequest shall not be invalid because the testamentary trust or the will or codicil establishing such testamentary trust was not in existence when the will or codicil containing such devise or bequest was executed, if the testator of the will or codicil establishing such testamentary trust predeceases the testator of the will or codicil containing such devise or bequest, and such will or codicil establishing such testamentary trust had been or is subsequently admitted to probate.

Unless the will otherwise provides—

(1) property passing under such devise or bequest shall be deemed to pass directly to the trustee or trustees of the testamentary trust and shall become a part of the assets of such trust, and shall not be deemed held under a separate testamentary trust;

(2) a termination of the trust in accordance with the terms of said trust or by its exhaustion or by operation of law or otherwise shall not invalidate the devise or bequest.

The provisions of this section shall apply to any devise or bequest made by a testator living on the effective date of this Act or born subsequent thereto, without regard to the date of execution of the will or codicil containing such devise or bequest or of the trust instrument, or any amendment thereto: *Provided, however,* That the provisions of this Act shall not be construed as casting any doubt upon the validity as heretofore existing of (a) any devise or bequest made by a testator who shall have died prior to the effective date hereof, or (b) any devise or bequest which does not come within the provisions of this Act. (Mar. 3, 1901, 31 Stat., ch. 854, § 1628a, as added Dec. 5, 1963, 77 Stat. 345, Pub. L. 88-192, § 1.)

EFFECTIVE DATE OF AMENDMENT

Section 3 of act Dec. 5, 1963, provides that: "This Act shall become effective upon the date of enactment of this Act."

REFERENCES IN TEXT

"This act" referred to in text is the act of Mar. 3, 1901, 31 Stat. ch. 854.

REPEAL OF INCONSISTENT PROVISIONS

Section 2 of act Dec. 5, 1963, provides that "Any provisions of law inconsistent with the provisions of this Act is hereby repealed."

Chapter 3.—PROBATE OF WILLS

§ 19-303. Guardian ad litem for infant or non compos.

NOTES TO DECISIONS

2. Grandchildren

Guardian ad litem was not required to be appointed at time of probate of testator's will to represent testator's grandchildren, since grandchildren were not within class of testator's heirs at law and would not be entitled to or interested in testator's estate in case will had not been executed. *In re Estate of W. V. James, deceased* (1963, 221 F. Supp. 456).

§ 19-309. Caveat.

NOTES TO DECISIONS

4.50. Person in interest

Where there had been no promise or contract to adopt caveator which would support her equitable adoption theory and admittedly there was no statutory adoption, caveator, being a stepdaughter only, was not a "person in interest" within statute authorizing a person in interest to file a caveat to probate of will. *E. Erstein* v. *S. D. Meshner, Executrix etc.* (1964, 333 F. 2d 152, —— U.S. App. D.C. ——).

§ 19-312. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.

Whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: *Provided,* That in all cases in which all persons interested are sui juris and before the court the issues may be tried and determined by the court, without a jury, upon the written consent of all such parties. If they are to be tried by a jury, they shall be triable in said probate court by petit jurors drawn for service in the United States District Court for the District of Columbia; and at least ten days prior to the time of trial all of the heirs at law or next of kin of the decedent, or both together, as the case may require, and all persons claiming under the will in question, or any other instrument on file purporting to be a will of the decedent, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. If any one of them be an infant or of unsound mind he shall have a guardian ad litem appointed for him by the court before such trial shall proceed. If, as to any party in interest, the notification shall be returned "not to be found," the court shall assign a new day for such trial, and shall order publication, at least twice a week for a period of not less than four weeks, of the substance of the issues and of the date fixed for the trial thereof in some newspaper of general circulation in the District, and may order such further publication as the case may require. And the United States District Court for the District of Columbia may from time to time prescribe and revise rules and regulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification. Personal service on absent parties shall not be essential to the jurisdiction of the court. The proceeding for impaneling a jury for the trial of said issues shall be the same as if they were being tried in any other part of the court. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereupon shall, subject to proceedings in error and to such revision as the common law provides, be res judicata as to all persons; nor shall the validity of such judgment be impeached or examined collaterally. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 140; June 30, 1902, 32 Stat. 526, ch. 1329; Apr. 19, 1920, 41 Stat. 557, ch. 153; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

The section is set out in this supplement to correct an erroneous reference to the court of appeals. The words "court of appeals" are omitted and the words "in any other part of the court" inserted.

Chapter 4.—REGISTER OF WILLS

§§ 19-401 to 19-404a. Repealed. Dec. 23, 1963, 77 Stat. 621, 622, 625, and 628, Pub. L. 88-241, § 21.

Sections, R.S.D.C. 929 and 930, and act Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 121, as amended, and act Aug. 2, 1949, 63 Stat. 491, ch. 383, §§ 3 and 5, dealt with register of wills, his appointment, oath of office, bond, powers and deposit of fees and costs collected by him. Matter is now covered by sections 11-504 to 11-506.

§§ 19-404 and 19-405. Repealed. Aug. 2, 1949, 63 Stat. 492, Ch. 383, § 9.

§§ 19-406 to 19-409. Repealed. Dec. 23, 1963, 77 Stat. 621, 622, Pub. L. 88-241, § 21.

Sections, R.S.D.C. 933, 934, and 935, and act Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 120, dealt with posting of fees, penalty for failure to post fees, penalty for charging greater fees and provided that register of wills was to act as probate clerk. Matter is now covered by sections 11-504 to 11-506.

§§ 19-410 and 19-411. Omitted.

These sections embodying Maryland statutes, contained provisions preventing register of wills from practicing law and provided a penalty for charging fees. These sections are now superseded by sections 11-504 to 11-506.

TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

Chapter 1.—GENERAL PROVISIONS

§ 20–101. Competency—Determination by probate court.

NOTES TO DECISIONS

4. Discretion of court

Though court has power under District of Columbia statute to select administrator from outside immediately preferred class, exercise of that discretion must take into account scheme of statutory preferences, and court must have sound reason to depart thereform. *In re Estate of C. H. Lucas* (1964, 229 F. Supp. 452).

§ 20–107. Removal of co-executor, co-administrator, or co-collector for negligence or misconduct—complaint—Recovery of loss or damage.

NOTES TO DECISIONS

1. Grounds for removal

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly, court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. *C. P. Henry* v. *J. A. Grimes, Jr.* (1964, 334 F. 2d 550, —— U.S. App. D.C. ——).

Executor's commission is not fixed by Probate Court until final settlement of his accounts, and he may not ordinarily collect any fees on account before his services terminate. *Id.*

Chapter 2.—ADMINISTRATORS

§ 20–201. Granting of letters of administration.

NOTES TO DECISIONS

3.50. Largest creditor

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan* v. *A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

§ 20–204. Persons entitled to administer—Surviving spouse or children.

NOTES TO DECISIONS

1. Appointment of outsider

If there is next of kin, who is not barred under specific statutory disqualification, and who applies for letters, creditor or person not in any preferred classification may not be appointed administrator. *In re Estate of C. H. Lucas* (1964, 229 F. Supp. 452).

§ 20–209. Persons entitled to administer—Males to be preferred.

NOTES TO DECISIONS

1. Order of priority

Male paternal first cousins were preferred class over female maternal first cousins as to right to letters of administration. *J. F. Gage et al.* v. *The Riggs National Bank of Washington, D.C., etc.* (1963, 320 F. 2d 715, 115 U.S. App. D.C. 396).

Values of substance inhere in right to letters of administration and those upon whom that right has been conferred by statute should not be deprived of it, except as statute has provided. *Id.*

In appropriate case and for sound reasons, discretion may be exercised to select an administrator from among lesser preferred classes of next of kin. *Id.*

§ 20–216. Persons entitled to administer—Creditors.

NOTES TO DECISIONS

Discretion of court 3
Largest creditor 3.50
Priority of next of kin 3.51

3. Discretion of court

Where all next of kin were first cousins of deceased, and all male next of kin filed declinations, but only female next of kin applied for letters of administration, her application would be granted, and application of close friend and creditor of deceased for letters of administration would be denied. *In re Estate of C. H. Lucas* (1964, 229 F. Supp. 452).

Fact that male next of kin of deceased field declinations and consented to appointment of creditor of deceased as administratrix did not divest female next of kin of equal degree of statutory right to appointment as administratix. *Id.*

3.50. Largest creditor

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan* v. *A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

3.51. Priority of next of kin

If there is a next of kin who is not barred under a specific statutory disqualification and who applies for letters, a creditor or person not in any preferred classification may not be appointed. *J. F. Gage et al.* v. *The Riggs National Bank of Washington, D.C., etc.* (1963, 320 F. 2d 715, 115 U.S. App. D.C. 396).

Where neither pleadings nor oral argument brought to court's attention question that appointment of an outsider as administrator turned upon issue of whether there has been a declination by cousins, appointment of bank as administrator would be remanded for further proceedings. *Id.*

§ 20–306. Absent executor—Summons—Notice.

If said executor shall not have been present at the probate of the will, but shall be within the District, a summons may be issued to him, either at the instance of any person interested or ex officio by the register of wills, requiring him to appear and file his bond as required by law within five days after service of said summons; and if he be not found in

said District, notice shall be given to him by publication to appear within ten days after publication of said notice, and on his failure to appear and give his bond and qualify by taking the prescribed oath, as aforesaid, administration may be granted as if no executor had been named in the will. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 267; June 24, 1949, 63 Stat. 268, ch. 242, § 2.)

CODIFICATION

The section is set out in this supplement to give effect to the amendments made by the act of June 24, 1949, which were inadvertently omitted in the main volume. The amendments consisted of striking out the word "twenty" and substituting "five" in lieu thereof and striking the words "within thirty days after the first publication" and substituting the words "within ten days after publication".

Chapter 6.—ACCOUNTS

§ 20–605. Disbursements and allowances.

NOTES TO DECISIONS

10. Probate Court's authority to compel payment

An attorney may have a claim against executors or estate which he can collect in an action at law in district court but statute authorizing executors to pay attorneys' fees and probate court to allow such fees in executors' accounts does not authorize probate court to order executors to pay the fees. *J. F. Bird et al., Executors etc.* v. *C. B. Sullivan, Jr.* (1963, 316 F. 2d 675, 115 U.S. App. D.C. 24).

TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

Chap. Sec.
6. Fiduciaries 21–601

Chapter 1.—INFANTS AND OTHER INCOMPETENTS

§ 21–101. Natural guardians.

NOTES TO DECISIONS

1. Custody of child

In action by wife for maintenance and support, exclusive custody of minor children of the parties should not have been awarded to wife where husband and wife and the children remained living together in the same household. *R. L. Clements* v. *R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

Chapter 2.—PROPERTY OF INFANTS AND PERSONS NON COMPOS MENTIS

Sec.

21–225. Definitions.
21–226. Gifts of securities, money, life insurance, or annuity contracts to minors—Manner of making.
21–227. Gift irrevocable—Rights and duties of guardian or custodian.
21–228. Custodian to be one person—Rights, powers and duties of custodian.
21–229. Compensation of custodian or guardian—Bond—Liability of custodian serving without compensation.
21–230. Successor custodians—Eligibility—Rights, powers and duties—Manner of resignation—Removal.
21–231. Accounting by custodian or his legal representative.
21–232. Persons dealing with donor or custodian, duties of.
21–233. Construction of sections 21–225 to 21–234—Sections not exclusive method for making gifts to minors.
21–234. Separability of provisions.

§ 21–213. Contract for sale by adult in behalf of himself and infant or person non compos mentis.

If a contract has been made for the sale of lands, tenements, or hereditaments by a person or persons interested therein jointly or in common with an infant, idiot, or person non compos mentis, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of all the circumstances, considers to be for the interest and advantage both of the infant, idiot, or person non compos mentis and of the other person or persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according thereto; and all sales and deeds made in pursuance of the order shall be sufficient in law to transfer the estate and interest of the infant, idiot, or person non compos mentis in the property. (As amended Dec. 23, 1963, 77 Stat. 618, Pub. L. 88–241, § 13.)

AMENDMENT

1963—Section 13 of act Dec. 23, 1963, amended section to read as above set out.

§§ 21–214 to 21–224. Omitted.

The act entitled "An Act concerning gifts of securities to minors in the District of Columbia," Aug. 3, 1956, 70 Stat. 1028 to 1031, ch. 947, §§ 1 to 11, set out in the main volume of the Code as §§ 21–214 to 21–224, was amended generally by act Oct. 15, 1962, 76 Stat. 938, Pub. L. 87–821. The act as so amended is set out as sections 21–225 to 21–234 in this supplement. For this reason sections 21–214 to 21–224 are omitted as being superseded by the amended act.

RIGHTS OR LIABILITIES UNDER SECTIONS 214 TO 224 NOT AFFECTED

Section 2(b) of act Oct. 15, 1962, provides as follows: "The amendments made to sections 214 to 224, by the first section of this Act [§§ 225 to 234] shall not affect any right or liability under sections 214 to 224 existing on December 31, 1962."

§ 21–225. Definitions.

As used in sections 21–225 to 21–234, the following terms shall have the meaning ascribed to each:

(1) "Adult": one who has attained the age of twenty-one years.

(2) "Bank": any person or association of persons carrying on the business of banking, whether incorporated or not, in the District of Columbia.

(3) "Broker": one who is lawfully engaged in the business of effecting transactions in securities for the account of others; a bank which effects such transactions; and one who is lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(4) "Court": The United States District Court for the District of Columbia.

(5) "Custodial property":

(A) All securities, money, life insurance and annuity contracts under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in the manner prescribed in sections 21–225 to 21–234;

(B) The income from the custodial property; and

(C) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of such securities, money, life insurance and annuity contracts, and income.

(6) "Custodian": one so designated in the manner prescribed in this Act.

(7) "Guardian of a minor": the general guardian, guardian, tutor, or curator of the minor's property, estate or person.

(8) "Issuer": one who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the

security, or who becomes responsible for or in place of any such person.

(9) "Legal representative": the executor or the administrator, general guardian, committee, conservator, tutor, or curator of a person's property or estate.

(10) "Life insurance and annuity contracts": shall include only insurance and annuity contracts on the life of a minor or a member of the minor's family as herein defined.

(11) "Member of a minor's family": any of the minor's parents, grandparents, brothers, sisters, uncles, and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(12) "Minor": one who has not attained the age of twenty-one years.

(13) "Security": any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest of participation in, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include a security of which the donor is the issuer. A "security" is in "registered form" when it specifies a person entitled to it or to the right it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(14) "Transfer agent": one who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of is securities or in the issue of new securities or in the cancellation of surrender securities.

(15) "Trust company": a bank authorized to exercise trust powers. (Oct. 15, 1962, 76 Stat. 938, Pub. L. 87-821, § 1.)

EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

POPULAR NAME

Section 11 of act Oct. 15, 1962, provides as follows: "This Act [sections 21-225 to 21-234] may be cited as the 'District of Columbia Uniform Gifts to Minors Act'."

PRIOR ACT

The act entitled "An Act concerning gifts of securities to minors in the District of Columbia," Aug. 3, 1956, 70 Stat. 1028 to 1031, ch. 947, §§ 1 to 11, set out in the main volume of the Code as §§ 21-214 to 21-224, was amended generally by act Oct. 15, 1962, 76 Stat. 938, Pub. L. 87-821. The act as so amended is set out as sections 21-225 to 21-234 in this supplement. For this reason sections 21-214 to 21-224 are omitted as being superseded by the amended act.

REPEAL

Section 2(a) of act Oct. 15, 1962, provides as follows: "All laws or parts of laws in conflict with any provision of this Act [sections 21-225 to 21-234], are hereby repealed."

Section 2(c) of act Oct. 15, 1962, provides as follows: "Nothing herein shall be deemed to repeal or modify the Internal Revenue Code of 1954, as amended, and the District of Columbia Income and Franchise Tax Act of 1947, as amended."

RIGHTS OR LIABILITIES UNDER SECTIONS 214 TO 224 NOT AFFECTED

Section 2(b) of act Oct. 15, 1962, provides as follows: "The amendments made to sections 214 to 224, by the first section of this Act [§§ 225 to 234] shall not affect any right or liability under sections 214 to 224 existing on December 31, 1962."

§ 21-226. Gifts of securities, money, life insurance, or annuity contracts to minors—Manner of making.

(a) An adult may, during his lifetime, make a gift of a security, money, life insurance or annuity contract to one who is a minor on the date of the gift, if the subject of the gift is a security—

(1) in registered form, by registering it in the name of the donor, another adult, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act";

(2) not in registered form, by delivering it to an adult other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the designated custodian:

GIFT UNDER THE DISTRICT OF COLUMBIA UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act, the following security(ies); (insert an appropriate description of the security or securities delivered sufficient to identify it or them).

(Signature of donor)

Dated:---

(Name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the above Act.

(signature of custodian)

Dated:---

(3) If the subject of the gift is a life insurance or annuity contract, the ownership of the contract shall be registered by the donor of such contract in his own name or in the name of an adult member of the minor's family or in the name of any guardian of the minor, followed by the words "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act", and such contract shall be delivered to the person in whose name it is thus registered as custodian. If the contract is registered in the name of the donor as custodian, such registration shall of itself constitute the delivery required by this section.

(4) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult, or a bank with trust powers, followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act".

(b) Any gift made in the manner prescribed in subsection (a) may be made to only one minor.

(c) A donor who makes a gift to a minor as prescribed in subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible per-

son as custodian, nor renunciation by the person designated as custodian shall affect the consummation of the gift. (Oct. 15, 1962, 76 Stat. 939, Pub. L. 87–821, § 2.)

Effective Date

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–227. Gift irrevocable—Rights and duties of guardian or custodian.

(a) A gift made as prescribed in sections 21–225 to 21–234 shall be irrevocable and convey to the minor indefeasibly vested legal title to the security, money, life insurance or annuity contract given, but no guardian of the minor shall have any right, power, duty, or authority with respect to the custodial property except as provided in sections 21–225 to 21–234.

(b) By making a gift in the manner prescribed in sections 21–225 to 21–234, the donor incorporates in his gift all the provisions thereof and grants to the custodian, and to any issuer, transfer agent, bank, broker, insurance company, or third person dealing with a custodian, the respective powers, rights, and immunities provided in sections 21–225 to 21–234. (Oct. 15, 1962, 76 Stat. 940, Pub. L. 87–821, § 3.)

Effective Date

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–228. Custodian to be one person—Rights, powers, and duties of custodian.

(a) Only one person may be the custodian. He shall collect, hold, manage, invest, and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance, or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining that age, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in the manner prescribed in Sections 21–225 to 21–234.

(f) The custodian may sell, exchange, convert, or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices, and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act". He shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the same words. He shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property, and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(i) A custodian shall have and hold as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in Sections 21–225 to 21–234, all the rights and powers which a guardian has with respect to property not held as custodial property.

(j) If the subject of the gift is a life insurance or annuity contract, the custodian shall have all of the incidents of ownership in the contract which he may hold as custodian to the same extent as if he were the owner thereof personnally. The designated beneficiary of any such contract held by a custodian shall be the minor or, in the event of his death, the minor's estate. (Oct. 15, 1962, 76 Stat. 940, Pub. L. 87–821, § 4.)

Effective Date

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–229. Compensation of custodian or guardian—Bond—Liability of custodian serving without compensation.

(a) A custodian shall be entitled to reasonable compensation for his services and to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties: *Provided,* That a custodian may act without compensation for his services.

(b) Compensation for the guardian or custodian shall be according to:

(1) Any direction of the donor when the gift is made, provided that it is not in excess of any statutory limitation of the District of Columbia for guardians or custodians;

(2) Any statute of the District of Columbia applicable to custodians or guardians;

(3) Any order of the court.

(c) Except as otherwise provided in sections 21–225 to 21–234, a custodian shall not be required to give a bond for the performance of his duties.

(d) A custodian not compensated for his services shall not be liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing, or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in Sections 21–225 to 21–234. (Oct. 15, 1962, 76 Stat. 941, Pub. L. 87–821, § 5.)

Effective Date

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–230. Successor custodians — Eligibility — Rights, powers, and duties—Manner or resignation—Removal.

(a) Only an adult, a guardian of the minor, or a trust company shall be eligible to become successor custodian. A successor custodian shall have all the rights, powers, duties, and immunities of a custodian designated in the manner prescribed by Sections 21–225 to 21–234.

(b) A custodian, other than the donor, may resign and designate his successor by—

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form and each life insurance or annuity contract to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for (name of minor) under the District of Columbia Uniform Gifts to Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian, each life insurance or annuity contract registered in the name of the successor custodian, and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87–821, § 6.)

Effective Date

Section 3 of the act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–231. Accounting by custodian or his legal representative.

(a) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under Sections 21–225 to 21–234 or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87–821, § 7.)

Effective Date

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–232. Persons dealing with donor or custodian, duties of.

No issuer, transfer agent, bank, broker, insurance company, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian shall be responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale, or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by Sections 21–225 to 21–234, and shall not be obliged to inquire into the validity or propriety under the provisions of Sections 21–225 to 21–234 of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, and shall not be bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87–821, § 8.)

Effective Date

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–233. Construction of sections 21–225 to 21–234—Sections not exclusive method for making gifts to minors.

(a) The provisions of Sections 21–225 to 21–234 shall be construed to effectuate the general purpose

thereof to make uniform the law of those States which enact such provisions.

(b) Sections 21–225 to 21–234 shall not be construed as providing an exclusive method for making gifts to minors. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87–821, § 9.)

EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

§ 21–234. Separability of provisions.

If any provision of Sections 21–225 to 21–234 or the application thereof is held invalid, the other provisions or applications of such provisions shall not be affected thereby. (Oct. 15, 1962, 76 Stat. 942, Pub. L. 87–821, § 10.)

EFFECTIVE DATE

Section 3 of act Oct. 15, 1962, provides as follows: "This Act shall take effect January 1, 1963."

Chapter 3.—INSANE PERSONS, INQUESTS MENTALLY ILL

Sec.
21–351. Definitions.
21–352. Commission on Mental Health.
21–353. Voluntary hospitalization.
21–354. Hospitalization of nonprotesting persons.
21–355. Emergency hospitalization.
21–356. Hospitalization under court order.
21–357. Periodic examination and release.
21–358. Right to communication—Exercise of certain rights.
21–359. Veterans' administration facilities.
21–360. Penalties.
21–361. Nonresident.
21–362. Witness fees.
21–363. Not to be confined in jail.
21–364. Forms.
21–365. Surety.
21–366. Individuals previously hospitalized.

§ 21–301. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(e).

Section 115b of act Mar. 3, 1901, ch. 854, as added June 30, 1902, 32 Stat. 524, ch. 1329, as amended, provided authority for the court of equity to have jurisdiction over estates of lunatics, accounting by committees, compensation, and release of dower rights. See new sections 21–351 to 21–366.

NOTES TO DECISIONS

14. Statute of limitations

Statute of limitations did not begin to run against repayment of loans made to incompetent's estate by estate's committee until committee's death, when account of estate remained open and unsettled throughout committee's tenure up to and including time of his death. *W. H. Clarke, executor etc.* v. *V. K. Hickman, Jr., Committee etc.* (1962, 307 F. 2d 660, 113 U.S. App. D.C. 323).

§ 21–302. Repealed. Sept. 15, 1964, 78 Stat. 954, Pub. L. 88–597, § 19(g).

Section, act Mar. 3, 1927, 44 Stat. 1383, ch. 349, provided that a person may not be appointed as committee or trustee for more than five wards. See new sections 21–351 to 21–366.

§§ 21–303 to 21–305. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(e).

Sections 115c, 115d and 115e of act Mar. 3, 1901, ch. 854, as added June 30, 1902, 32 Stat. 524, ch. 1329, dealt with power of equity court over lunatic's estates, sale of real estate, conversion of proceeds of sale; sale of estate for maintenance or to pay judgment; and ratification of sale by the court. See sections 21–351 to 21–366.

§ 21–307. Jury in lunacy proceedings instituted by Commissioners—Appointment of committee or trustee—Costs and expense of maintenance—Payment.

The jury to be used in case the commissioners of the District of Columbia are the petitioners shall be impaneled by the United States marshal for said District, upon order of the court, from the jurors in attendance upon the criminal courts of said District, who shall perform such services in addition to and as part of their duties in said criminal courts: *Provided,* That during such time as jurors are not in attendance upon said criminal courts the court may direct the said marshal to impanel the jurors in attendance upon the municipal court of said District, who shall perform such duties in addition to and as part of their duties in said The District of Columbia Court of General Sessions; or the said court may direct a special jury to be summoned for such inquisitions. (Feb. 23, 1905, 33 Stat. 740, ch. 738, § 1.)

PARTIAL REPEAL

Section 19(f) of act Sept. 15, 1964, Pub. L. 88–597, repealed the last sentence of this section which reads as follows: "In case any such person adjudged to be of unsound mind has property, real or personal, the equity court of said District shall have full power in the same cause to appoint a committee or trustee of the person and estate of such person, according to the provisions of section 21–301, and such committee or trustee shall reimburse, out of the funds of the lunatic, the District of Columbia for all court costs expended or incurred by it and for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment." The District of Columbia Court of General Sessions was substituted in the remainder of text for "Municipal Court." See section 11–101 and revision note.

§ 21–308. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

Section, act of June 8, 1938, 52 Stat. 625, ch. 326, § 2, as amended dealt with establishment, composition, etc., of commission on mental health. See new section 21–351.

Section 19(b) of the repealing act of Sept. 15, 1964, preserved certain rights and liabilities, however, under sections 21–308, 21–310 to 318, and 21–320 to 21–325 in the following language: "(b) The repeal of the Act of June 8, 1938, and of the Act of August 9, 1939, shall not be construed to affect (1) any action or proceeding brought or existing on the date immediately preceding the date of the enactment of this Act, or (2) any liability incurred by any person for the payment of the costs of maintenance and treatment of an insane or incompetent person hospitalized in the District of Columbia prior to the date of the enactment of this Act [Sept. 15, 1964], and any such action or proceeding shall be heard and determined and such liability continued in accordance with the provisions of such Acts in the same manner and to the same extent as if they had not been repealed."

§ 21–310. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

Sections 1 to 9, act Aug. 9, 1939, 53 Stat. 1293, ch. 620, as amended, dealt with applications for writs de lunatico inquirendo; issuance of attachments for apprehension of persons believed to be incompetent; service of reports of commission, jury trial; composition of jury; procedure if no jury trial is demanded; commitment after trial; recommendations of commission; transfer of nonresident insane, confinement of residents, custody of harmless insane; and liability of relatives for costs of maintenance and treatment. See new provisions in sections 21–351 to 21–366.

NOTES TO DECISIONS

Commitment procedure 2
Grounds for commitment 4.50

2. Commitment procedure

Supreme Court granted certiorari, where important questions were raised as to procedure for confining criminally insane in District of Columbia and as to possible constitutional infirmities in statute under which commitment was made as applied to circumstances in case. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S.Ct. 1063, rev'g 288 F. 2d 388).

4.50. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

§ 21–311. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

See note to sections 21–308 and 21–310.

NOTES TO DECISIONS

Burden of proof 1.50
Grounds for commitment 4
Judicial determination required 7.50

1.50. Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

4. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

7.50 Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

§§ 21–312 to 21–314. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

See not to sections 21–308 and 21–310.

§ 21–315.—Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

See not to sections 21–308 and 21–310.

NOTES TO DECISIONS

Burden of proof .50
District not a voluntary creditor .51
Grounds for commitment 1.50
Habeas corpus 2
Judicial determination required 3

.50. Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 388).

.51. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc.* v. *District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

1.50. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

2. Habeas corpus

Findings, on habeas corpus application for release from mental institution to which petitioner had been confined upon his acquittal for insanity, that petitioner was free from mental disease and mental defect and could not be dangerous by reason of any mental disease or defect did not meet standards required by statute in not containing finding of freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future, irrespective of fact that his mental health might have improved. *W. Overholser* v. *H. T. O'Bierne* (1962, 302 F. 2d 852, 112 U.S. App. D.C. 267).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. *Id.*

Evidence adduced by petitioner seeking release on habeas corpus from mental institution to which he had been confined pursuant to his acquittal of criminal charges for insanity was insufficient to establish that he had made necessary recovery to point where he would be free from abnormal mental condition or that his release would not expose him or public to danger in reasonably foreseeable future. *Id.*

3. Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch v. W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

§ 21–316 to 21–317. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

See note to section 21–310.

§ 21–318. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 19(a).

See note to section 21–310.

NOTES TO DECISICNS

Construction 1.50
District not a voluntary creditor 2.50
Evidence 2.51
Liability for expenses of incompetent 3

1.50. Construction

Statute governing liability of father for cost of maintenance and treatment of insane child is not violative of due process. *C. N. Beach* v. *Government of the District of Columbia* (1963, 320 F. 2d 790, 116 U.S. App. D.C. 68).

District of Columbia statute governing liability of father for cost of maintenance and treatment of insane child creates liability which is not limited to father living in District. *Id.*

2.50. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc.* v. *District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

2.51. Evidence

Evidence supported finding that father of mental incompetent was financially able to pay $75 per month toward cost of maintenance and treatment of incompetent in public hospital. *C. N. Beach* v. *Government of the District of Columbia* (1963, 320 F. 2d 790, 116 U.S. App. D.C. 68).

3. Liability for expenses of incompetent

Father's liability for portion of cost of maintenance of mental incompetent in public hospital commenced as of date on which authorities demanded contribution

from him. *C. N. Beach* v. *Government of the District of Columbia* (1963, 320 F. 2d 790, 116 U.S. App. D.C. 68).

§ 21-319. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(d).

Section R.S. 4849, dealt with application of incompetents property to the cost of his maintenance. See new sections 21-351 to 21-366.

§§ 21-320 to 23-323. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(a).

Sections 10 to 15 of act Aug. 9, 1939, 53 Stat. 1298, ch. 620, dealt with hearings to restore status of paroled insane persons, trial and decision; witness fees; undertakings that may be required of petitioners; forms required on applications for commitment; penalties for false petition or affidavit and preservation of existing remedies. See new provisions under sections 21-351 to 21-366.

See also note to section 21-308.

NOTES TO DECISIONS

Discretionary relief 1.50
Recommittal without hearing 3

1.50. Discretionary relief

Patient who, after adjudication that she was of unsound mind, eloped from District of Columbia mental hospital and subsequently recovered mental health, had no right, in seeking restoration to status of person of sound mind, to statutory hearing before Mental Health Commission, or, since she was free, to habeas corpus, but was entitled to discretionary relief within court's inherent power. *In re Harriet DuBois* (1962, 207 F. Supp. 909).

3. Recommittal without hearing

Where petitioner had been committed to public mental hospital in District of Columbia in 1958 and after petitioner had left without permission an entry was made in hospital records showing that petitioner was discharged as "improved," petitioner could not four year later be recommitted under the prior order without a further hearing on ground that petitioner had not been legally restored. *W. G. Gillis* v. *D. C. Cameron, Sup't etc.* (1963, 324 F. 2d 419, 116 U.S. App. D.C. 387).

§ 21-324. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(a).

See note to sections 21-320 to 323.

See also note to section 21-308.

NOTES TO DECISIONS

1. Probable cause

Question of whether undisputed facts constitute probable cause for believing person named in District of Columbia lunacy proceeding to be insane or of unsound mind is one of law to be decided by court. *G. L. King* v. *L. H. Hildebrandt* (1964, 331 F. 2d 476, U.S. App. 2d Ct.).

§ 21-325. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(a).

See note to sections 21-320 to 21-329.

See also note to section 21-308.

NOTES TO DECISIONS

1. Discretionary relief

Patient who, after adjudication that she was of unsound mind, eloped from District of Columbia mental hospital and subsequently recovered mental health, had no right, in seeking restoration to status of person of sound mind, to statutory hearing before Mental Health Commission, or, since she was free, to habeas corpus, but was entitled to discretionary relief within court's inherent power. *In re Harriet DuBois* (1962, 207 F. Supp. 909).

§ 21-326. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(c).

Sections 1 to 6 of act Apr. 27, 1904, 33 Stat. 316, ch. 1618, related to apprehension and detention by police, without warrant, of insane persons found in public places; arrest at other than public places without warrant; temporary detention of alleged insane persons; temporary commitment of persons to other hospitals; detention in police station; discharge of persons certified not insane; certificates by physicians as to sanity or insanity and penalty for making false affidavit or certificate. See sections 21-351 to 21-366.

NOTES TO DECISIONS

Burden of proof 1.50
Judicial determination required 4.50

1.50. Burden of proof

Burden of proof is on party seeking civil commitment for insanity and only if trier of fact is satisfied that alleged insane person is insane may he be committed. *F. C. Lynch* v. *Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

4.50. Judicial determination required

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

§ 21-327. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(c).

See note to section 21-326.

NOTES TO DECISIONS

Privileged affidavit 3
Privileged statements 3.50
Sufficiency of evidence 4

3. Privileged affidavit

Defendant had probable cause to sign affidavits submitted to District of Columbia police as basis for arrest of plaintiff as person of unsound mind, and consequently affidavit was privileged under District of Columbia law, where plaintiff had disclosed to defendant her fears that people were trying to kill her, that unknown persons had damaged her personal possessions and had tried to poison her food, a psychiatrist's report that plaintiff was suffering from paranoid condition was read at hearing held by committee, of which defendant was a member, considering plaintiff's fitness for continued federal employment. *G. L. King* v. *L. H. Hildebrandt* (1963, 216 F. Supp. 814).

3.50. Privileged statements

Government psychologist who had several interviews with plaintiff and who considered expert medical opinion before making affidavit used in arrest of plaintiff as person of unsound mind, preliminary to lunacy proceeding in District of Columbia, had probable cause to sign affidavit, statements contained in affidavit were privileged and plaintiff could not recover from psychologist for libel after being discharged. *G. L. King* v. *L. H. Hildebrandt* (1964, 331 F. 2d 476, U.S. App. 2d Ct.).

4. Sufficiency of evidence

If one adjudged insane never saw or talked with physicians who filed affidavits prior to his arrest, and spoke only momentarily after arrest to physician who testified that examination disclosed need for hospital care, adjudication of insanity must be vacated. *In re R. V. Helman* (1961, 288 F. 2d 159, 109 U.S. App. D.C. 375).

§§ 21-328 to 21-331. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(c).

See note to section 21-326.

§ 21-332. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(d).

Section, R.S. 4856, dealt with discharge of patients on bond approved by the court. See new sections 21-351 to 21-366.

§ 21-333. Repealed. Sept. 15, 1964, 78 Stat. 953, Pub. L. 88-597, § 19(d).

Section, R.S. 4857, provided that insane person charged with breach of the peace shall not be confined in a jail. See section 21-351 to 21-366.

MENTALLY ILL

§ 21–351. Definitions.

As used in sections 21–351 to 21–366—

(1) the term "mental illness" means any psychosis or other disease which substantially impairs the mental health of an individual;

(2) the term "mentally ill person" means any person who has a mental illness, but shall not include a person committed to a private or public hospital in the District of Columbia by order of the court in a criminal proceeding;

(3) The term "physician" means an individual licensed under the laws of the District of Columbia to practice medicine, or an individual who practices medicine in the employment of the Government of the United States or of the District of Columbia;

(4) the term "private hospital" means any nongovernmental hospital or institution, or part thereof, in the District of Columbia, equipped and qualified to provide inpatient care and treatment for any individual suffering from a physical or mental illness;

(5) the term "public hospital" means any hospital or institution, or part thereof, in the District of Columbia, owned and operated by the Government of the United States or of the District of Columbia, equipped and qualified to provide inpatient care and treatment for any individual suffering from a physical or mental illness;

(6) the term "administrator" means an individual in charge of a public or private hospital or his delegate; and

(7) the term "chief of service" means the physician charged with overall responsibility for the professional program of care and treatment in the particular administrative unit of the hospital to which the patient has been admitted or such other member of the medical staff as shall be designated by the chief of service.

(Sept. 15, 1964, 78 Stat. 944, Pub. L. 88–597, § 2.)

SHORT TITLE

Section 1 of act Sept. 15, 1964, provided: "This Act may be cited as the District of Columbia Hospitalization of the Mentally Ill Act."

§ 21–352. Commission on mental health.

The United States District Court for the District of Columbia (hereinafter referred to as the "court") is authorized to appoint a Commission on Mental Health, composed of nine members. One member shall be a member of the bar of such court, who has engaged in active practice of law in the District of Columbia for a period of at least five years prior to his appointment. He shall be the Chairman of the Commission and act as the administrative head of the Commission and its staff. He shall preside at all hearings and direct all of the proceedings before the Commission. He shall devote his entire time to the work of the Commission. Eight members of the Commission shall be physicians who have been practicing medicine in the District of Columbia and who have had not less than five years' experience in the diagnosis and treatment of mental illnesses. Each member of the Commission shall hold office for four years, the appointments of physician members to be staggered. The physician members shall serve on a part-time basis and shall be rotated by assignment of the chief judge of the court, so that at any one time the Commission shall consist of the Chairman and two physician members. Physician members of the Commission may practice their profession during their tenure of office, but may not participate in the disposition of the case of any person in which they have rendered professional service or advice. The court shall also appoint an alternate lawyer member who shall have the same qualifications as the lawyer member of the Commission and who shall serve on a part-time basis and act as Chairman in the absence of the permanent Chairman. The salaries of the members of the Commission and its employees shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. The alternate Chairman shall be paid on a per diem basis at the same rate of compensation as fixed for the permanent Chairman. It shall be the duty of the Commission on Mental Health to examine alleged mentally ill persons, inquire into their affairs and the affairs of persons who may be legally liable for their support, and to make reports and recommendations to the court. Except as otherwise provided in sections 21–351 to 21–366, the Commission may conduct its examinations and hearings either at the courthouse or elsewhere at its discretion. The court may issue subpenas at the request of the Commission returnable before the Commission, for the appearance of the alleged mentally ill person, witnesses, and persons who may be liable for the support of the mentally ill person. The Commission, or any of the members thereof, shall be competent and compellable witnesses at any trial, hearing, or other proceeding conducted pursuant to sections 21–351 to 21–366 and the physician-patient privilege shall not be applicable. Sept. 15, 1964, 78 Stat. 944, Pub. L. 88–597, § 3.)

CONTINUANCE OF COMMISSION ON MENTAL HEALTH

Section 20 of act Sept. 15, 1964, provided: "The Commission on Mental Health to which reference is made in section 21–352 is the Commission established by the Act of June 8, 1938 (52 Stat. 625), as amended [Former § 21–308]. Nothing contained in any amendment made by this Act [Sections 21–351 to 21–366] shall be construed to affect or impair the existence of the Commission so established, or to alter the pay or the terms of office of the members of such Commission serving as such on September 14, 1964."

§ 21–353. Voluntary hospitalization.

(a) Any individual may apply to any public or private hospital in the District of Columbia for admission to such hospital as a voluntary patient for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon the request of any such individual eighteen years of age or over (or in the case of any individual under eighteen years of age, upon a request made by his spouse, parent, or legal guardian), the administrator of a public hospital shall, if an examination by an admitting psychiatrist at such public hospital reveals the need for such hospitalization, and the administrator of a private hospital may, admit any such individual as a voluntary patient to such hospital for observation, diagnosis and care and treatment of a mental illness in accordance with the provisions of sections 21–351 to 21–366.

(b) Any voluntary patient admitted to any hospital pursuant to this section shall, if he is eighteen years of age or over, be entitled at any time to obtain his release from such hospital by filing a written request with the chief of service. The chief of service shall, within a period of forty-eight hours after the receipt of any such request (unless such period shall expire on a Saturday, Sunday, or legal holiday, then not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday), release the voluntary patient making such request. In the case of any voluntary patient under the age of eighteen years, the chief of service shall release such patient, according to the provisions of this section, upon the written request of his spouse, parent, or legal guardian. The chief of service may release any voluntary patient hospitalized pursuant to this section whenever he determines that such patient has recovered or that his continued hospitalization is no longer beneficial to him or advisable. (Sept. 15, 1964, 78 Stat. 945, Pub. L. 88–597, § 4.)

§ 21–354. Hospitalization of nonprotesting persons.

(a) A friend or relative of an individual believed to be suffering from a mental illness may make application on behalf of that individual to the admitting psychiatrist of any hospital by presenting the individual, together with a referral from a practicing physician. Such individual may be accepted for examination and treatment by any private hospital and shall be accepted for examination and treatment by any public hospital if, in the judgment of the admitting psychiatrist, the need for such is indicated on the basis of the individual's mental condition and such individual signs a statement at the time of such admission stating that he does not object to hospitalization. Such statement shall contain in simple, nontechnical language the fact that the individual is to be hospitalized and a description of the right to release set out in subsection (b) of the section. The admitting psychiatrist may admit such an individual without referral from a practicing physician if the need for an immediate admission is apparent to the admitting psychiatrist upon preliminary examination.

(b) Any person hospitalized under the provisions of subsection (a) of this section shall be immediately released upon his written request unless proceedings for hospitalization under court order pursuant to section 21–356 have been initiated. (Sept. 15, 1964, 78 Stat. 946, Pub. L. 88–597, § 5.)

§ 21–355. Emergency hospitalization.

(a) Any duly accredited officer or agent of the Department of Public Health of the District of Columbia, or any officer authorized to make arrests in the District of Columbia, or the family physican of the individual in question, who has reason to believe that an individual is mentally ill and, because of such illness, is likely to injure himself or others if he is not immediately detained may, without a warrant, take such individual into custody, transport him to a public or private hospital, and make application for his admission thereto for purposes of emergency observation and diagnosis. Such application shall reveal the circumstances under which the individual was taken into custody and the reasons therefor.

(b) Subject to the provisions of subsection (c) of this section, the administrator of any private hospital, may, and the administrator of any public hospital shall, admit and detain for purposes of emergency observation and diagnosis any individual with respect to whom such application is made, if such application is accompanied by a certificate of a psychiatrist on duty at such hospital stating that he has examined the individual and is of the opinion that he has symptoms of a mental illness and, as a result thereof, is likely to injure himself or others unless he is immediately hospitalized; not later than twenty-four hours after the admission pursuant to this section of any individual to a hospital, the administrator of such hospital shall serve notice of such admission, by registered mail, to the spouse, parent, or legal guardian of such individual and to the Commission on Mental Health.

(c) No individual admitted to any hospital under subsection (b) of this section shall be detained in such hospital for a period in excess of forty-eight hours from the time of his admission (unless such period shall expire on a Saturday, Sunday, or legal holiday, then not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday) unless the administrator of such hospital has, within such period, filed a written petition with the court for an order authorizing the continued hospitalization of such individual for emergency observation and diagnosis for a period not to exceed seven days from the time such order is entered.

(d) The court shall, within a period of twenty-four hours after the receipt by it of such petition (unless such period shall expire on a Saturday, Sunday, or legal holiday, then not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday) either order the hospitalization of such individual for emergency observation and a diagnosis for a period of not to exceed seven days from the time such order is entered, or order his immediate release. In making its determination, the court shall consider the written reports of the agent, officer, or physician who made the application under subsection (b) of this section, the certificate of the examining psychiatrist which accompanied it, and any other relevant information.

(e) Any individual whose continued hospitalization is ordered under subsection (d) of this section shall be entitled upon his request to a hearing before the court entering such order. Any such hearing so requested shall be held within a period of twenty-four hours after receipt of such request (unless such period shall expire on a Saturday, Sunday, or legal holiday, then not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday).

(f) The chief of service of any hospital in which an individual is hospitalized under a court order entered pursuant to subsection (d) of this section shall, within forty-eight hours after such order is entered, have such individual examined by a physician. If the physician, after his examination, certifies that in his opinion the indiivdual is not mentally ill to the extent that he is likely to injure himself or others

if not presently detained, the individual shall be immediately released. The chief of service shall, within forty-eight hours after such examination has been completed, send a copy of the results thereof by registered mail to the spouse, parents, attorney, legal guardian, or nearest known adult relative of the individual examined.

(g) Any physician or psychiatrist making application or conducting an examination under sections 21–351 to 21–366 shall be a competent and compellable witness at any trial hearing or other proceeding conducted pursuant to sections 21–351 to 21–366 and the physician-patient privilege shall not be applicable.

(h) Notwithstanding any other provision of this section, the administrator of any hospital in which an individual is hospitalized under this section may, if judicial proceedings for his hospitalization have been commenced under section 21–356 detain such individual therein during the course of such proceedings. (Sept. 15, 1964, 78 Stat. 946, Pub. L. 88–597, § 6.)

§ 21–356. Hospitalization under court order.

(a) Proceedings for the judicial hospitalization of any individual in the District of Columbia may be commenced by the filing of a petition with the Mental Health Commission by his spouse, parent, or legal guardian, by any physician, duly accredited officer or agent of the Department of Public Health, or by any officer authorized to make arrest in the District of Columbia. Such petition shall be accompanied (1) by a certificate of a physician stating that he has examined the individual and is of the opinion that such individual is mentally ill, and because of such illness is likely to injure himself or others if allowed to remain at liberty, or (2) by a sworn written statement by the petitioner that (A) the petitioner has good reason to believe that such individual is mentally ill and, because of such illness, is likely to injure himself or others if allowed to remain at liberty, and (B) that such individual has refused to submit to examination by a physician.

(b) Within three days after the receipt by it of any petition filed under subsection (a) of this section, the Commission shall send a copy of such petition by registered mail to the individual with respect to whom it was filed.

(c) The Commission shall promptly examine any individual alleged to be mentally ill after the filing of a petition provided by subsection (a) of this section and shall thereafter promptly hold a hearing on the issue of his mental illness. Such hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the individual named in such petition. In conducting such hearing, the Commission shall hear testimony of any person whose testimony may be relevant and shall receive all relevant evidence which may be offered. Any individual with respect to whom a hearing is held under this section shall be entitled, in his discretion, to be present at such hearing, to testify, and to present and cross-examine witnesses. The Commission shall also hold a hearing in order to determine liability under the provisions of subsection (g) of this section for the expenses of hospitalization of the alleged mentally ill person, if it is determined that he is mentally ill and should be hospitalized as provided under sections 21–351 to 21–366. Such hearing may be conducted separately from the hearing on the issue of mental illness. If conducted separately, it may be conducted by the Chairman of the Commission alone.

(d) The alleged mentally ill person shall be represented by counsel in any proceeding before the Commission or the court, and if he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. Any counsel so appointed shall be awarded compensation by the court for his services in an amount determined by it to be fair and reasonable. Such compensation shall be charged against the estate of the individual for whom such counsel was appointed, or against any unobligated funds of the Commission, as the court in its discretion may direct. The Commission or the court, as the case may be, shall, at request of any counsel so appointed, grant a recess in such proceeding (but not for more than five days) to give such counsel an opportunity to prepare his case.

(e) If the Commission finds, after such hearing, that the individual with respect to whom such hearing was held is not mentally ill or if mentally ill, is not mentally ill to the extent that he is likely to injure himself or others if allowed to remain at liberty, the Commission shall immediately order his release and notify the court of that fact in writing. If the Commission finds, after such hearing, that the individual with respect to whom such hearing was held is mentally ill, and because of such illness is likely to injure himself or others if allowed to remain at liberty, the Commission shall promptly report such fact, in writing, to the United States District Court for the District of Columbia. Such report shall contain the Commission's findings of fact, conclusions of law, and recommendations. Any alleged mentally ill person with respect to whom such report is made shall have the right to demand a jury trial and shall be advised of that right by the Commission orally and in writing. A copy of the report of the Commission shall be served personally on the alleged mentally ill person and his attorney.

(f) Upon the receipt by the court of any such report referred to in subsection (e), the court shall promptly set the matter for hearing and shall cause a written notice of the time and place of the final hearing to be served personally upon the individual with respect to whom such report was made and his attorney, together with notice that he has five days following the date on which he is so served within which to demand a jury trial. Any such demand may be made by such individual or by anyone in his behalf. If a jury trial is demanded within such five-day period, it shall be accorded by the court with all reasonable speed. If no timely demand is made for such trial, the court shall determine such individual's mental condition on the basis of the report of the Commission, or on such further evidence in addition to such report as the court may require. If the court or jury (as the case may be) finds that such individual is not mentally ill, the

court shall dismiss the petition and order his release. If the court or jury (as the case may be) finds that such individual is mentally ill and, because of that illness, is likely to injure himself or others if allowed to remain at liberty, the court may order his hospitalization for an indeterminate period, or order any other alternative course of treatment which the court believes will be in the best interests of such individual or of the public. The Commission, or any member thereof, shall be competent and compellable witnesses at any hearing or jury trial held pursuant to sections 21–351 to 21–366. The jury to be used in any case where a jury trial is demanded under this Act shall be impaneled, upon order of the court, from the jurors in attendance upon other branches of the court, who shall perform such services in addition to and as part of their duties in such court.

(g) The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of such mentally ill person, if such estate is sufficient for the purpose, shall pay the cost to the District of Columbia of such mentally ill person's maintenance, including treatment, in any hospital in which such person is hospitalized under sections 21–351 to 21–366. It shall be the duty of the Commission to examine, under oath, the father, mother, husband, wife, and adult children of any alleged metally ill person whenever such relatives live within the District of Columbia, and to ascertain the ability of such relatives or estate to maintain or contribute toward the maintenance of such mentally ill person; except that in no case shall such relatives or estate be required to pay more than the actual cost to the District of Columbia of maintenance of such alleged mentally ill person. If any individual hereinabove made liable for the maintenance of a mentally ill person shall fail so to provide or pay for such maintenance, the court shall issue to such individual a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of such patient. The citation shall be served at least ten days before the hearing thereon. If, upon such hearing, it shall appear to the court that the mentally ill person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degree hereinabove referred to who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by such relative of such sum or sums as it may find they are reasonably able to pay and as may be necessary to provide for the maintenance and treatment of such mentally ill person. Such order shall require the payment of such sums to the District of Columbia treasurer annually, semiannually, quarterly, or monthly as the court may direct. It shall be the duty of the treasurer to collect such sums due under this section, and to turn the same into the Treasury of the United States to the credit of the District of Columbia. Any such order may be enforced against any property of the mentally ill person or of the individual liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case.

(h) No petition, application, or certificate authorized under sections 21–355(a) and 21–366(a) may be considered if made by a physician who is related by blood or marriage to the alleged mentally ill person, or who is financially interested in the hospital in which the alleged mentally ill person is to be detained, or, except in the case of physicians employed by the United States or the District of Columbia, who are professionally or officially connected with such hospital. No such petition, application, or certificate of any physician shall be considered unless it is based on personal observation and examination of the alleged mentally ill person made by such physician not more than seventy-two hours prior to the making of the petition, application, or certificate. Such certificate shall set forth in detail the facts and reasons on which such physician based his opinions and conclusions. (Sept. 15, 1964, 78 Stat. 947, Pub. L. 88–597, § 7.)

§ 21–357. Periodic examination and release.

(a) Any patient hospitalized pursuant to a court order obtained under section 21–356, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, shall be entitled, upon the expiration of ninety days following such order and not more frequently than every six months thereafter, to request, in writing, the chief of service of the hospital in which the patient is hospitalized, to have a current examination of his mental condition made by one or more physicians. If the request is timely it shall be granted. The patient shall be entitled, at his own expense, to have any duly qualified physician participate in such examination. In the case of any such patient who is indigent, the Department of Public Health shall, upon the written request of such patient, assist him in obtaining a duly qualified physician to participate in such examination in the patient's behalf. Any such physician so obtained by such indigent patient shall be compensated for his services out of any unobligated funds of such Department in an amount determined by it to be fair and reasonable. If the chief of service, after considering the reports of the physicians conducting such examination, determines that the patient is no longer mentally ill to the extent that he is likely to injure himself or others if not hospitalized, the chief of service shall order the immediate release of the patient. However, if the chief of service, after considering such reports, determines that such patient continues to be mentally ill to the extent that he is likely to injure himself or others if not hospitalized, but one or more of the physicians participating in such examination reports that the patient is not mentally ill to such extent, the patient may petition the court for an order directing his release. Such petition shall be accompanied by the reports of the physicians who conducted the examination of the patient.

(b) In considering such petition, the court shall consider the testimony of the physicians who participated in the examination of such patient, and the reports of such physicians accompanying the petition. After considering such testimony and reports, the court shall either (1) reject the petition

and order the continued hospitalization of the patient, or (2) order the chief of service to immediately release such patient. Any physician participating in such examination shall be a competent and compellable witness at any trial or hearing held pursuant to sections 21–351 to 21–366.

(c) The chief of service of a public or private hospital shall as often as practicable, but not less often than every six months, examine or cause to be examined each patient admitted to any such hospital pursuant to section 21–356 and if he determines on the basis of such examination that the conditions which justified the involuntary hospitalization of such patient no longer exist, the chief of service shall immediately release such patient.

(d) Nothing in this section shall be construed to prohibit any person from exercising any right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus. (Sept. 15, 1964, 78 Stat. 950, Pub. L. 88–597, § 8.)

§ 21–358. Right to communication—Exercise of certain rights.

(a) Any person hospitalized in a public or private hospital pursuant to sections 21–351 to 21–366 shall be entitled (1) to communicate by sealed mail or otherwise with any individual or official agency inside or outside the hospital, and (2) to receive uncensored mail from his attorney or personal physician. All other incoming mail or communications may be read before being delivered to the patient, if the chief of service believes such action is necessary for the medical welfare of the patient who is the intended recipient. However, any mail or other communication which is not delivered to the patient for whom it is intended shall be immediately returned to the sender. But nothing in this section shall prevent the administrator from making reasonable rules regarding visitation hours and the use of telephone and telegraph facilities.

(b) Any person hospitalized in a public hospital for a mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment. The administrator of each public hospital shall keep records detailing all such care and treatment received by any such person and such records shall be made available, upon that person's written authorization, to his attorney or personal physician. Such records shall be preserved by the administrator until such person has been discharged from the hospital.

(c) No mechanical restraint shall be applied to any patient hospitalized in any public or private hospital for a mental illness unless the use of restraint is prescribed by a physician and, if so prescribed, such restraint shall be removed whenever the condition justifying its use no longer exists. Any use of a mechanical restraint, together with the reasons therefor, shall be made a part of the medical record of the patient.

(d) No patient hospitalized pursuant to sections 21–351 to 21–366 shall, by reason of such hospitalization, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, hold a driver's license, unless such patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the chief of service of the public or private hospital in which any such patient is hospitalized is of the opinion that such patient is unable to exercise any of the aforementioned rights, the chief of service shall immediately notify the patient and the patient's attorney, legal guardian, spouse, parents, or other nearest known adult relative, and the United States District Court for the District of Columbia, the Commission on Mental Health, and the Board of Commissioners of the District of Columbia of that fact.

(e) Any individual in the District of Columbia who, by reason of a judicial decree ordering his hospitalization entered prior to the date of the enactment of sections 21–351 to 21–366, is considered to be mentally incompetent and is denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold a driver's license solely by reason of such decree, shall, upon the expiration of the one-year period immediately following such date of enactment, be deemed to have been restored to legal capacity unless, within such one-year period, affirmative action is commenced to have such individual adjudicated mentally incompetent by a court of competent jurisdiction.

(f) Any patient, and the patient's spouse, parents, or other nearest known adult relative, shall receive, upon admission of the patient to the hospital, a written statement outlining in simple, nontechnical language all release procedures provided by sections 21–351 to 21–366, setting out all rights accorded to patients by sections 21–351 to 21–366, and describing procedures provided by law for adjudication of incompetency and appointment of trustees or committees for the hospitalized individual. (Sept. 15, 1964, 78 Stat. 950, Pub. L. 88–597, § 9.)

§ 21–359. Veterans' Administration facilities.

Nothing in sections 21–351 to 21–366 shall be constructed to require the admission of any individual to any Veterans' Administration or military hospital facility unless such individual is otherwise eligible for care and treatment in such facility. (Sept. 15, 1964, 78 Stat. 952, Pub. L. 88–597, § 10.)

§ 21–360. Penalties.

(a) Any individual who, (1) without probable cause for believing a person to be mentally ill, causes or conspires with or assists another to cause the hospitalization of any such person under sections 21–351 to 21–366, or (2) causes or conspires with or assists another to cause the denial to any person of any right accorded to him under sections 21–351 to 21–366, shall be punished by a fine not exceeding $5,000 or imprisonment not exceeding three years, or both.

(b) Any individual who, without probable cause for believing a person to be mentally ill, executes a petition, application, or certificate pursuant to sections 21–351 to 21–366, by which such individual secures or attempts to secure the apprehension, hospitalization, detention, or restraint of any such person, or any physician or psychiatrist who knowingly

makes any false certificate or application pursuant to sections 21–351 to 21–366 as to the mental condition of any person, shall be punished by a fine not exceeding $5,000 or imprisonment not exceeding three years, or both. (Sept. 15, 1964, 78 Stat. 952, Pub. L. 88–597, § 11.)

§ 21–361. Nonresident.

If an individual ordered committed to a public hospital by the court pursuant to subsection (f) of section 21–356 is found by the Commission, subject to a review by the court, not to be a resident of the District of Columbia, and to be a resident of another place, he shall be transferred to the State of his residence if an appropriate institution of that State is willing to accept him. If the person be an indigent, the expense of transferring him, including the traveling expenses of necessary attendants, shall be borne by the District of Columbia. For the purposes of this section, a "resident of the District of Columbia" means an individual who has maintained his principal place of abode in the District of Columbia for more than one year immediately prior to the filing of the petition referred to in subsection (a) of section 21–356. (Sept. 15, 1964, 78 Stat. 952, Pub. L. 88–597, § 12.)

§ 21–362. Witness fees.

Witnesses subpenaed under the provisions of sections 21–351 to 21–366 shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. (Sept. 15, 1964, 78 Stat. 952, Pub. L. 88–597, § 13.)

§ 21–363. Not to be confined in jail.

No person apprehended, detained, or hospitalized under any provision of sections 21–351 to 21–366, shall be confined in jail or in any penal or correctional institution. (Sept. 15, 1964, 78 Stat. 952, Pub. L. 88–597, § 14.)

§ 21–364. Forms.

All applications and certificates for the hospitalization of any individual in the District of Columbia under sections 21–351 to 21–366 shall be made on forms approved by the Commission and furnished by it. (Sept. 15, 1964, 78 Stat. 952, Pub. L. 88–597, § 15.)

§ 21–365. Surety.

The court in its discretion may require any petitioner under section 21–356 to file an undertaking with surety to be approved by the court in such amount as the court may deem proper, conditioned to save harmless the respondent by reason of costs incurred, including attorney's fees, if any, and damages suffered by the respondent, as a result of any such action. (Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 16.)

§ 21–366. Individuals previously hospitalized.

The provisions of sections 21–357, 21–358, 21–361, 21–363, 21–364, and 21–365 shall be applicable to any person who, on or after September 15, 1964, is a patient in a hospital in the District of Columbia by reason of having been declared insane or of unsound mind pursuant to a court order entered in a non-criminal proceeding prior to such date of enactment; except that any request for an examination authorized under section 21–357 may be made by such person, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, after the expiration of the thirty-day period following September 15, 1964 and not more frequently than every six months thereafter. (Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 17.)

Chapters 5.—CONSERVATORS

§ 21–501. Appointment of conservators.

If an adult person residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness (not amounting to unsoundness of mind), mental illness (as such term is defined in section 21–351), or physical incapacity properly to care for his property, the United States District Court for the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint some fit person to be conservator of his property. (Oct. 24, 1951, 65 Stat. 638, ch. 545, § 1; Sept. 15, 1964, 78 Stat. 953, Pub. L. 88–597, § 18.)

AMENDMENT

1964—Section 18 of act Sept. 15, 1964, amended section by inserting after "unsoundness of mind" the phrase "mental illness (as such term is defined in section 21–351)."

NOTES TO DECISIONS

1. Redemption by conservator

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator, under District of Columbia statutes. *Shenandoah Corp.* v. *E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

§ 21–503. Powers and duties of conservator.

NOTES TO DECISIONS

Evidence as to personal liability 1
Redemption by conservator 2

1. Evidence as to personal liability

Because agreement between landlords and conservator of estate of tenant to pay increased rent for premises occupied by tenant was oral, evidence was admissible to show understanding of parties as to whether conservator was to be bound personally by agreement. *W. E. Summerbell et ano.* v. *W. B. McDonnell, individually etc.* (D.C. App. 1964, 197 A. 2d 150).

Evidence supported trial court's finding that landlords and conservator of tenant's estate who had orally agreed to pay increased rent for premises occupied by tenant did not intend to bind conservator in his individual capacity. *Id.*

2. Redemption by conservator

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator, under District of Columbia statutes. *Shenandoah Corp.* v. *E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

Chapter 6.—FIDUCIARIES

[Transferred from Title 28–Chapter 23, Subchapter I]

Sec.
21–601. Definitions.
21–602. Application of payment made to fiduciaries.
21–603. Repealed.
21–604. Transfer of negotiable instruments by fiduciary.
21–605. Check drawn by fiduciary payable to third person.

Sec.
21–606. Check drawn by and payable to fiduciary.
21–607. Deposit in name of fiduciary as such.
21–608. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.
21–609. Deposit in fiduciary's personal account.
21–610. Deposit in names of two or more trustees.
21–611. Law not retroactive.
21–612. Cases not provided for in chapter.
21–613. Uniformity of interpretation.
21–614. Short title.

§ 21–601. Definitions.

The following provisions concerning liability for participation in breaches of fiduciary obligations, and to make uniform the law with reference thereto, shall be in force in the District of Columbia, namely:

(1) In this chapter unless the context or subject matter otherwise requires:

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

(2) A thing is done "in good faith" within the meaning of this subchapter, when it is in fact done honestly, whether it be done negligently or not. (May 14, 1928, 45 Stat. 509, ch. 545, § 1.)

Cross Reference

Transfer of securities to and by fiduciaries, see § 28–2901 et seq.

NOTES TO DECISIONS

1. In general

Considered in its entirety, it is manifest that the effect of the act (this subchapter) is to enlarge the ability of fiduciaries to avoid the limitations imposed by the common law, although the liabilities of the fiduciaries as such are not affected, but only those of persons dealing with them. *Colby* v. *Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

§ 21–602. Application of payment made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (May 14, 1928, 45 Stat. 510, ch. 545, § 2.)

Cross Reference

Trust or joint accounts, deposits, or safe-deposit boxes, see § 26–201 et seq.

NOTES TO DECISIONS

Incompetent's committee 1
Misappropriation 2

1. Incompetent's committee

Where corporation lending money to incompetent made checks payable to members of incompetent's committee without adding word "committee" to checks and members of committee allegedly embezzled proceeds of checks, recovery against indorsees cashing checks for members of committee was not precluded merely by absence of word "committee" from checks, and corporation would not be responsible for loss on such theory, in absence of evidence that indorsees had knowledge that members of committee were breaching their fiduciary obligation or had knowledge of such facts rendering the taking of checks by indorsees bad faith. *Espey* v. *Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 210 F. 2d 728, 93 U.S. App. D.C. 280).

2. Misappropriation

The word "misappropriation" means wrong appropriation, or the use of a fund for a different purpose than that for which it was created, but not necessarily a dishonest purpose. *Colby* v. *Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

§ 21–603. Repealed. July 5, 1960, 74 Stat. 324, Pub. L. 86–584, § 12.

Section, act May 14, 1928, 45 Stat. 510, ch. 545, § 3, related to registration of transfer of securities held by fiduciaries. See § 28–2901 et seq.

§ 21–604. Transfer of negotiable instruments by fiduciary.

If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 4.)

NOTES TO DECISIONS

Knowledge of bad faith 1
Liability of lender 2

1. Knowledge of bad faith

Where plaintiff's check was presented at a bank by president of the payee personally who endorsed on the back of it the name of the company and his own name as president and in addition signed his own name as individual and the bank credited the amount of the check to the personal account of the president, maker was not entitled to recover the amount thereof from the bank where there was no suggestion of bad faith by the bank and no proof which would have put it on notice that the president was guilty of a breach of faith in negotiating the check and depositing the proceeds to his own credit. *Evans* v. *Prentice et al.* (D.C. Mun. App. 1951, 79 A. 2d 396).

2. Liability of lender

Where court authorized members of incompetent's committee to negotiate loan on security of incompetent's realty, lender made checks payable to members of committee without adding word "committee" and such members thereafter allegedly embezzled proceeds of checks, omission of word "committee" was not cause of alleged embezzlement, making lender responsible therefor, in

view of fact that presence of word would not have prevented members from cashing checks or from embezzling proceeds. *Espey* v. *Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 210 F. 2d 728, 93 U.S. App. D.C. 280).

§ 21–605. Check drawn by fiduciary payable to third person.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 5.)

NOTES TO DECISIONS

1. In general

A third person who knowingly participates in the breach of a fiduciary's obligation can be required to make good the resulting loss. *Anacostia Bank* v. *U.S. Fidelity & Guaranty Co.* (1941, 119 F. 2d 455, 73 App. D.C. 388, 134 A.L.R. 995).

§ 21–606. Check drawn by and payable to fiduciary.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 6.)

NOTES TO DECISIONS

1. Trust deposit transferred

Where trust deposit in the name of the individual trustees and trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, the transaction was not covered by this section, but comes within the scope of § 28–2312 and must be decided under common-law principles. *Colby* v. *Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

§ 21–607. Deposit in name of fiduciary as such.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 7.)

§ 21–608. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 8.)

§ 21–609. Deposit in fiduciary's personal account.

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 9.)

NOTES TO DECISIONS

1. Trust deposit transferred

Where trust deposit in the name of the individual trustees and the trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, it was not the case of a transfer by the fiduciary in payment of a personal debt, but was a transfer by one set of fidu-

ciaries to another, and the bank was not liable unless it had actual knowledge of misappropriation. *Colby v. Riggs Nat. Bank* (1937, 67 App. D.C. 259, 92 F. 2d 183, 114 A.L.R. 1065).

§ 21-610. Deposit in names of two or more trustees.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (May 14, 1928, 45 Stat. 512, ch. 545, § 10.)

§ 21-611. Law not retroactive.

The provisions of this chapter shall not apply to transactions that took place prior to May 14, 1928. (May 14, 1928, 45 Stat. 512, ch. 545, § 11.)

§ 21-612. Cases not provided for in chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency negotiable instruments, and banking, shall continue to apply. (May 14, 1928, 45 Stat. 512, ch. 545, § 12.)

§ 21-613. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (May 14, 1928, 45 Stat. 512, ch. 545, § 13.)

NOTES TO DECISIONS

Construction 1
Purpose 2

1. Construction

In construing this chapter, recourse may be had to the reports of the committees of Congress and to the notes of the Commissioners. *Colby* v. *Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

2. Purpose

The purpose of this chapter was to establish uniform and definite rules in place of the diverse and indefinite rules formerly prevailing as to constructive notice of breaches of fiduciary obligations. It is obvious that in the use of the words "actual knowledge" Congress meant to change the rule previously applied in many courts of constructive, implied or imputed knowledge. *Colby* v. *Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

§ 21-614. Short title.

This chapter may be cited as the Uniform Fiduciaries Act. (May 14, 1928, 45 Stat. 512, ch. 545, § 14.)

PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22—CRIMINAL OFFENSES.
TITLE 23—CRIMINAL PROCEDURE.
TITLE 24—PRISIONERS AND THEIR TREATMENT.

TITLE 22.—CRIMINAL OFFENSES

Chapter 1.—GENERAL PROVISIONS

§ 22–103. Attempts to commit crime.

NOTES TO DECISIONS

Attempted petit larcency 2.50
In general 1
Maximum penalty 3.50
Validity of statute 5

1. In general

The general attempt statute covers attempted petit larceny not expressly covered by any other statute. *United States* v. *R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

2.50. Attempted petit larceny

The fact that the fine was greater under general attempt statute than for completed offense of petit larceny did not mean that Congress intended to exclude attempted petit larceny from scope of the general attempt statute *United States* v. *R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

3.50. Maximum penalty

The maximum penalty for attempted petit larceny can be no greater than the maximum penalty for the completed offense. *United States* v. *R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

5. Validity of statute

The general attempt statute is not invalid as applied to attempted petit larceny on theory that it authorizes greater penalty than authorized for completed offense. *Unied States* v. *R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

§ 22–104. Second conviction.

NOTES TO DECISIONS

2. Notice

Where no notice was given to defendant that government intended to ask for greater penalties as second offender, defendant was only subject to penalty that could be imposed on first offender. *A. Dobkin* v. *District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

In second offender cases, government must advise defendant of penalty to be demanded in time for him to demand jury trial. *Id.*

§ 22–105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

Accessory after fact .50
Aid and abet 3
Charged as principal 4
Guilty knowledge 5.50
Instructions 6

.50. Accessory after fact

Defendant could be convicted as accessory after fact, even though he was present before, during and after crime. *J. S. Smith* v. *United States* (1962, 306 F. 2d 286, 113 U.S. App. D.C. 126).

3. Aid and abet

One who aids in commission of crime is as responsible for that act as if he committed it directly. *H. L. Williams and D. G. Reeves* v. *United States* (D.C. App. 1963, 190 A. 2d 269).

Evidence supported conviction of appealing defendants of assault and of attempted petit larceny, since court could conclude that defendants were associated with principal offender in the venture and made a conscious effort to help it succeed. *Id.*

Evidence supported conviction of defendant, who at no time struck or pushed assault victim during altercation between victim, defendant and two others, and who could not be said by victim to have joined the other two in searching victim's pockets, for assault either on theory that concert of action by defendant and the other two threatened or menaced the victim or that defendant aided and abetted the other two. *J. T. Rogers and B. F. Herring* v. *United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Aiding and abetting assault renders one guilty of crime even if he does not actively participate. *Id.*

4. Charged as principal

Where defendants are charged as principals under aiding and abetting statute, act of one defendant is act of each. *E. E. Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

5.50. Guilty knowledge

To be an "aider and abettor" in unauthorized use of motor vehicle, a mere passenger must be shown to have had guilty knowledge, and this requires more than showing that he rode in automobile, pushed automobile, and repaired a punctured tire. *Wm. H. Kemp, Jr.* v. *United States* (1962, 311 F. 2d 774, 114 U.S. App. D.C. 88).

Evidence was insufficient to convict defendant as aider and abettor of another in unauthorized use of motor vehicle. *Id.*

6. Instructions

Testimony of assault victim that defendant and two other men were "after" him authorized instruction to jury on theory of aiding and abetting even if defendant's actions did not assume proportions of assault. *J. T. Rogers and B. F. Herring* v. *United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

§ 22–106. Accessories after the fact.

NOTES TO DECISIONS

1. Accessory after fact

Defendant could be convicted as accessory after fact, even though he was present before, during and after crime. *J. S. Smith* v. *United States* (1962, 306 F. 2d 286, 113 U.S. App. D.C. 126).

Chapter 4.—ARSON

§ 22–403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

3.50. Inference of malice

Malice in damaging of right front vent of automobile window could be inferred from intentional wrongdoing

and value of property could be inferred from evidence respecting its useful, functional purpose. *F. L. Paige* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 759).

Chapter 5. — ASSAULT — MAYHEM — THREAT OF BODILY HARM

Sec.
22–508. Penalty for assaulting, beating, or fighting on account of money won by gaming.

§ 22–501. Assault with intent to kill, rob, rape, or poison.

NOTES TO DECISIONS

Evidence—Sufficiency 3
Identity of victim 3.50
Instructions 6
Intent to rape 7
Question for jury 8.50

3. Evidence—Sufficiency

Evidence was sufficient to permit convictions under indictment charging robbery and assault with intent to commit robbery. *J. Rogers and H. Waldon* v. *United States* (1963, 318 F. 2d 223, 115 U.S. App. D.C. 252).

Evidence was sufficient to show requisite intent in prosecution for assault with intent to commit robbery. *R. Oden* v. *United States* (1961, 295 F. 2d 547, 111 U.S. App. D.C. 201).

3.50. Identity of victim

It was not necessary to allege identity of person sought to be robbed where defendant was charged with assault to commit robbery, and such information, if desired by defendant, should have been sought by motion for a bill of particulars. *S. E. Young* v. *United States* (1961, 288 F. 2d 398, 109 U.S. App. D.C. 414).

6. Instructions

Considering instructions as a whole together with very strong evidence of guilt of defendant of housebreaking, assault with dangerous weapon, assault of police officer with dangerous weapon, and assault with intent to kill, and considering the fact that defendant was satisfied with instructions as given, errors in instructions did not affect substantial rights or otherwise require reversal. *G. E. Nixon* v. *United States* (1962, 309 F. 2d 316, 114 U.S. App. D.C. 21).

7. Intent to rape

To make out a case of "assault with intent to commit rape", the evidence must show beyond a reasonable doubt (1) an assault, (2) an intent to have carnal knowledge of female, and (3) a purpose to carry into effect such intent with force and against consent of the female. *W. A. Baber* v. *United States* (1963, 324 F. 2d 390, 116 U.S. App. D.C. 358).

In prosecution for assault with intent to rape, defendant was entitled to directed verdict because of lack of evidence of purpose to carry into effect the intent to commit rape with force and against consent of victim. *Id.*

8.50. Question for jury

Jury was justified in finding that assault with intent to commit robbery and robbery were not product of alleged mental disease of defendant, where psychiatrist testified that defendant was suffering from low grade mental illness predisposing to psychosis particularly when defendant was under influence of large amounts of alcohol, and evidence indicated that defendant was completely sober at time of alleged offenses. *T. Hawkins* v. *United States* (1962, 310 F. 2d 849, 114 U.S. App. D.C. 44).

§ 22–502. Assault with intent to commit mayhem or with dangerous weapon.

NOTES TO DECISIONS

Evidence 3
Instructions 5

3. Evidence

Evidence was sufficient to present question for jury as to whether defendant was guilty of assault with a dangerous weapon. *R. Dean* v. *United States* (1962, 314 F. 2d 250, 114 U.S. App. D.C. 245).

5. Instructions

Errors, if any, in instructions in prosecution for assault with dangerous weapon, on burden of proof to negate claim of defendant that discharge of the pistol was accidental, and with respect to credibility of chief witness for the prosecution, were not, under the circumstances, prejudicial. *R. Dean* v. *United States* (1962, 314 F. 2d 250, 114 U.S. App. D.C. 245).

§ 22–504. Assault or threatened assault in a menacing manner.

NOTES TO DECISIONS

Admissibility of evidence 6
Aid and abet .50
Corroboration 9
Cross-examination 4.50
Elements of assault 5.50
Instructions 15
Review 19

.50. Aid and abet

Evidence supported conviction of appealing defendants of assault and of attempted petit larceny, since court could conclude that defendants were associated with principal offender in the venture and made a conscious effort to help it succeed. *H. L. Williams and D. G. Reeves* v. *United States* (D.C. App. 1963, 190 A. 2d 269).

Evidence supported conviction of defendant, who at no time struck or pushed assault victim during altercation between victim, defendant and two others, and who could not be said by victim to have joined the other two in searching victim's pockets, for assault either on theory that concert of action by defendant and the other two threatened or menaced the victim or that defendant aided and abetted the other two. *J. T. Rogers and B. F. Herring* v. *United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Aiding and abetting assault renders one guilty of crime even if he does not actively participate. *Id.*

4.50. Cross-examination

Although goal of counsel of defendants charged with assault was to show victim's real background by examining him concerning his employment history and experience, ordering discontinuance of such line of questioning after a recitation that victim had worked at last employment for 8 months, before that for 6 months at another employment and still earlier at a third employment was justified to avoid needless preoccupation with collateral matters. *J. T. Rogers and B. F. Herring* v. *United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

While cross-examination is basic right, it is subject to reasonable regulation by court in interest of orderly and expeditious trial. *Id.*

Cross-examination is an absolute right. *J. Bandoni* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

In prosecution for assault, cross-examination of the prosecutrix respecting her past experiences, emotional history and background to shed light on her testimonial reliability was not unduly curtailed. *Id.*

5.50. Elements of assault

Violence in its ordinary meaning is not a necessary element of assault, and attempt to do unlawfully to another any bodily injury however small constitutes an "assault". *C. Harris* v. *United States* (D.C. App. 1964, 201 A. 2d 532).

Evidence that defendant jostled victim and fumbled with victim's trouser cuffs, and that there was impact at area of victim's hip pocket constituted sufficient evidence to send to jury on question of assault in case involving defendant who had allegedly taken wallet from victim's hip pocket. *Id.*

6. Admissibility of evidence

Exclusion of testimony as to victim's prior specific acts of violence, communicated to but not personally observed, by defendant who was accused of assault and claimed self-defense, was error. *J. M. King* v. *United States* (D.C. Mun. App. 1962, 177 A. 2d 912).

In prosecution for assault or homicide accused may show prior acts of violence by alleged victim to support claim of self-defense. *Id.*

Time alone is not controlling in determining the spontaneity of an exclamation, and of equal importance is whether the declaration was influenced by external circumstances of physical shock or stress of nervous excitement. *J. Bandoni* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

Admitting testimony of witness as to her conversation with the assaulted complainant though more than an hour occurred between the assault and the report to the witness was not error as violating the hearsay rule. *Id.*

9. Corroboration

Testimony of complaining witness in prosecution for assault was sufficiently corroborated. *D. Konvalinka* v. *United States* (1961, 287 F. 2d 346, 109 U.S. App. D.C. 307; aff'g 162 A. 2d 778).

15. Instructions

Testimony of assault victim that defendant and two other men were "after" him authorized instruction to jury on theory of aiding and abetting even if defendant's actions did not assume proportions of assault. *J. T. Rogers and B. F. Herring* v. *United States* (D.C. Mun. App. 1961, 174 A. 2d 356).

Failure to instruct jury as to effect of five-hour delay in reporting alleged assault to the police was not error where no such instruction was requested. *J. Bandoni* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

19. Review

Defendant prosecuted for assault was not entitled to a continuance and trial before a new jury panel because members thereof were prejudiced in that on the day before defendant's trial his wife was convicted by a jury for carrying a dangerous weapon and the defendant's and wife's jury were selected from the same array, where the defendant's contention had no support in the record. *J. Bandoni* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

§ 22–505. Assault on member of police force.

NOTES TO DECISIONS

Evidence 1.50
Instructions 2

1.50. Evidence

Evidence sustained conviction for assaulting and interfering with an officer of the metropolitan police department engaged in performance of his official duties. *I. R. Lawson* v. *United States* (1962, 301 F. 2d 520, 112 U.S. App. D.C. 196).

2. Instructions

Considering instructions as a whole together with very strong evidence of guilt of defendant of housebreaking, assault with dangerous weapon, assault of police officer with dangerous weapon, and assault with intent to kill, and considering fact that defendant was satisfied with instructions as given, errors in instructions did not affect substantial rights or otherwise require reversal. *G. E. Nixon* v. *United States* (1962, 309 F. 2d 316, 114 U.S. App. D.C. 21).

§ 22–507. Threats to do bodily harm.

Whoever is convicted in the District of threats to do bodily harm shall be fined not more than $500 or imprisoned not more than six months, or both, and, in addition thereto or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding one year. (As amended Dec. 23, 1963, 77 Stat. 618, Pub. L. 88–241, § 11(b).)

AMENDMENT

1963—Section 11(b) of act Dec. 23, 1963, amended section to read as above set out.

NOTES TO DECISIONS

1. Evidence—Admissibility

Admission of testimony that defendant charged with threatening to do bodily harm to complainant had made prior threats to do bodily harm and to shoot her was admissible to show state of mind of defendant and complainant. *C. B. McDonald* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 396).

Generally, evidence of offense wholly independent of crime charged is inadmissible, but such evidence is admissible where acts are so blended or connected with the one on trial that proof of one incidentally involves the other, they explain the circumstances of offense charged, or they tend to logically prove any element of the offense. *Id.*

Evidence of conduct prior to commission of alleged crime is admissible if so related or connected with crime as to establish common scheme of purpose, the pursuance of a single object, or defendant's guilty knowledge, intent, or motive. *Id.*

§ 22–508. Penalty for assaulting, beating, or fighting on account of money won by gaming.

[Transferred from former section 16–705]

In case any person or persons whatsoever, shall assault and beat, or shall challenge or provoke to fight any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or provoking to fight such other person or persons upon the account aforesaid, being thereof convicted upon an indictment or information to be exhibited against him or them for that purpose, shall suffer imprisonment during the term of two years. (9 Ann, ch. 14, § 8, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 692; Comp. Stat. D.C., p. 245, § 17.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Assaults and disorderly conduct generally, see §§ 22–501 to 22–507, 22–1101 to 22–1120.

Chapter 9.—DOMESTIC RELATIONS

§ 22–901. Cruelty to children.

NOTES TO DECISIONS

4. Instructions

Failure to instruct that jury was required to find beyond a reasonable doubt that defendant was under a legal duty to supply food and necessities to infant before they could find her guilty of manslaughter in failing to provide such items was plain error. *M. L. Jones* v. *United States* (1962, 308 F. 2d 307, 113 U.S. App. D.C. 352).

Finding of legal duty was critical element of crime of involuntary manslaughter based on breach of legal obligation to provide food and necessities to an infant, with such failure resulting in his death. *Id.*

§ 22–903. Willful neglect or refusal to support wife or minor child—Punishment—Order of allowance—Recognizance—Trial under original charge.

NOTES TO DECISIONS

.50. Abuse of Discretion

No abuse of discretion appeared in denial of motion to withdraw guilty plea to nonsupport charge against defendant who, though he had previously pleaded guilty to similar charge, contended that he did not recognize significance of charge and that failure to support was due to financial inability. *W. Campbell Jr.* v. *United States* (D.C. Mun. App. 1961, 168 A. 2d 532).

Chapter 10.—FORNICATION

§ 22–1002. Fornication.

NOTES TO DECISIONS

2. Nature of offense

Government employee's alleged taking of a hotel room with a prostitute did not constitute "criminal conduct" which would support dismissal of the government employee where the conduct charged was not a crime under applicable laws even though employee had admitted his act to police and had forfeited collateral following a purported arrest therefor. *A. Pelicone* v. *L. H. Hodges, Secretary etc.* (1963, 320 F. 2d 754, 116 U.S. App. D.C. 32).

Chapter 11.—DISORDERLY CONDUCT

§ 22–1101. Affrays.

Whoever is convicted of an affray or of keeping a bawdy or disorderly house in the District shall be fined not more than $500 or imprisoned not more than one year, or both. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 11(a).)

AMENDMENT

1963—Section 11(a) of act Dec. 23, 1963, amended section to read as above set out.

§ 22–1107. Unlawful assembly—Profane and indecent language.

NOTES TO DECISIONS

Elements of offense .50
Evidence 1

.50. Elements of offense

Defendant's conduct and not crowd's reaction to it must be starting point for determining whether defendant's message was of such nature as to come within ambit of free speech guarantee of First Amendment, and audience reaction and immediacy of disorder become significant elements of proof of disorderly conduct only after speaker passes bounds of argument or persuasion and undertakes incitement to riot. *C. R. Allen* v. *District of Columbia* (D.C. App. 1963, 187 A. 2d 888).

Defendant's activities in counterpicketing another organization by carrying a sign demanding more police brutality for "Reds" and dragging what purported to be flag of a foreign government on ground in front of crowd, which gave no open displays of anger or threats of violence, was within protection of First Amendment and did not constitute disorderly conduct. *Id.*

1. Evidence

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr.* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

§ 22–1112. Lewd, indecent, or obscene acts.

NOTES TO DECISIONS

Act committed in privacy 1
Corroboration of evidence 5
Evidence 4
Intent 8
Public place 8.50
Res Judicata 9.50

1. Act committed in privacy

Ordinary acts involving exposure as result of carelessness or thoughtlessness, particularly when such acts take place within privacy of one's home, do not in themselves establish offense of indecent exposure. *G. B. Selph* v. *District of Columbia* (D.C. App. 1963, 188 A. 2d 344).

Evidence was insufficient to sustain conviction for indecent exposure. *Id.*

Nudity is not per se "obscene", and it is not illegal for a man to be completely unclothed in his room; it becomes so only if he intentionally exposes himself to other persons. *C. A. Hearn* v. *District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

4. Evidence

Evidence was sufficient to sustain conviction for indecent exposure and making an indecent sexual proposal. *E. Haynes* v. *District of Columbia* (D.C. App. 1964, 202 A. 2d 919).

Evidence of government which presented two women complainants, who testified they saw defendant exposing himself, positively identifying him as maintenance man in their apartment development, was sufficient to sustain finding of his guilt of obscene and indecent exposure notwithstanding his production of five alibi witnesses. *R. Campbell* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 557).

5. Corroboration of evidence

There must be corroboration in sex offenses, especially where offense is purely verbal and proof disappears as soon as words are spoken, but government is not required to produce witness who actually heard words spoken and corroboration may consist of circumstantial evidence supporting prosecutrix story. *A. Goodsaid* v. *District of Columbia* (D.C. App. 1963, 187 A. 2d 486).

Reluctance of woman, who contended that taxicab driver made indecent sexual proposals to her, to make complaint, driver's offer to apologize for what he might have said, his failure to make immediate denial of charges, and fact that, after period of over two weeks, he recognized complainant as former passenger, recalled engaging in conversation with her, and remembered his remark to her as she left taxicab sufficiently corroborated complainant's story. *Id.*

Testimony of police officers who had observed commission of indecent act constituted valid corroboration of alleged act. *L. R. Herland* v. *District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 362).

8. Intent

Before conviction for indecent exposure can be upheld, it must be shown that exposure was intentional, not accidental. *G. B. Selph* v. *District of Columbia* (D.C. App. 1963, 188 A. 2d 344).

Evidence disclosed that defendant, who appeared without clothes in early morning hours at second floor window of his hot and oppressive room at rear of hotel overlooking seemingly uninhabited alley area and who was observed by several police officers and room clerk, did not deliberately and intentionally expose himself, so that he was not guilty of obscene or indecent exposure. *C. A. Hearn* v. *District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

An exposure becomes indecent when it occurs at such a time and place where reasonable man knows or should know his act will be open to observation of others; the required criminal intent is usually established by some action by which defendant draws attention to his exposed condition or by display in place so public that it must be presumed it was intended to be seen by others. *Id.*

8.50. Public place

Unlocked wash room in hotel in which indecent act occurred was a public place, and fact that other participant willingly engaged did not relieve defendant from guilt in committing such act in public. *L. R. Herland* v. *District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 362).

9.50. Res judicata

The acquittal of defendant of charge of committing an indecent act precluded the government, as a matter of law, from relying on the evidence relating to this alleged indecent act to support its charge of an alleged indecent exposure on the same night. *C. A. Hearn* v. *District of Columbia* (D.C. Mun. App. 1962, 178 A. 2d 434).

§ 22–1121. Disorderly conduct—Generally.

NOTES TO DECISIONS

Breach of peace .50
Construction 1
Due process 1.48
Elements of offense 1.49
Evidence 1.50
Intent 3

.50. Breach of peace

Proof of breach of peace is not required for conviction of disorderly conduct. *M. L. Stovall* v. *United States and District of Columbia* (D.C. App. 1964, 202 A. 2d 390).

1. Construction

Disorderly conduct statute is violated when there is noisy, riotous, or inflammatory behavior provoking breach of peace, but there can be violation of such statute without such extreme conduct. *Scott, Ewald, Carpenter and Young* v. *District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 849).

Defendant in ordering followers into hostile audience to stop heckling of speech and assault of one spectator as direct result of defendant's command to his followers,

authorized conviction of disorderly conduct. *G. L. Rockwell* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

1.48. Due process

Disorderly conduct statute does not violate due process clause of Fifth Amendment although it does not require proof of breach of peace element; such statute does no more than give police the right within reasonable limitations to keep public sidewalks free of unnecessary obstructions and prevent groups from congregating in way that breach of peace might result. *Scott, Ewald, Carpenter and Young* v. *District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 849).

Government, which was prosecuting defendants who had stationed themselves just west of northwest gate of White House and wore arm bands reading "Bomb Tests Kill People" for disorderly conduct, was not required to prove actual or impending breach of peace. *Id.*

1.49. Elements of offense

Defendant's conduct and not crowd's reaction to it must be starting point for determining whether defendant's message was of such nature as to come within ambit of free speech guarantee of First Amendment, and audience reaction and immediacy of disorder become significant elements of proof of disorderly conduct only after speaker passes bounds of argument or persuasion and undertakes incitement to riot. *C. R. Allen* v. *District of Columbia* (D.C. App. 1963, 187 A. 2d 888).

Defendant's activities in counterpicketing another organization by carrying a sign demanding more police brutality for "Reds" and dragging what purported to be flag of a foreign government on ground in front of crowd, which gave no open displays of anger or threats of violence, was within protection of First Amendment and did not constitute disorderly conduct. *Id.*

1.50. Evidence

Testimony of police officer that accused had hit, shoved and kicked his wife on a public street showed a series of assaults and justified conviction of disorderly conduct. *M. L. Stovall* v. *United States and District of Columbia* (D.C. App. 1964, 202 A. 2d 390).

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heiman, Jr.* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

3. Intent

Under statute, one lacking intent to be disorderly may nevertheless be guilty if conduct is such that breach of peace may be occasioned thereby. *G. L. Rockwell* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

Chapter 12.—EMBEZZLEMENT

§ 22–1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

NOTES TO DECISIONS

17. Intent

Hotel cashier clerk's conversion of $649 of employer's $1,000 placed in clerk's custody was not accompanied by criminal intent essential to embezzlement by employee wrongfullly converting employer's funds to employee's use, where clerk had carelessly left hotel with the $649 at end of his tour of duty, instead of leaving it there, and thereafter clerk lost or somebody stole the money. *C. E. Anzoategui* v. *United States* (1964, 335 F. 2d 1000, —— U.S. App. D.C. ——).

§ 22–1209. Embezzlement by mortgagor of personal property in possession.

(a) A person or any legal successor in interest of such person, having executed a security agreement creating a security interest in personal property securing a monetary obligation owed to a secured party and having under the security agreement:

(1) both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of the disposition, sells or otherwise disposes of the property but willfully and wrongfully fails to account to the secured party for proceeds of disposition; or

(2) no right of sale or other disposition of the property, willfully and wrongfully secretes, withholds, sells, or disposes of the property, or converts it to his own use, or, without the consent of the secured party, removes it out of the District, or maliciously injures or destroys it, in violation of the security agreement—

if the lesser of the value of the proceeds not so accounted for or of the property so secreted, withheld, sold, disposed of, converted, removed, or injured or destroyed, or, in either case, of the unpaid balance of the monetary obligation so secured, is more than $100, shall be fined not more than $5,000 or imprisoned not more than five years, or both; or, if the lesser of any of the values as herein described is $100 or less, shall be fined not more than $1,000 or imprisoned not more than one year or both.

(b) In a case in which a debtor in possession of personal property subject to a security interest, who would be guilty of an offense under this section, is a corporation or a partnership, an officer, director, partner, or agent of the debtor who aids or abets in the commission of the offense shall be punished as provided by subsection (a) of this section.

(c) As used in this section, "security agreement", "security interest", and "secured party" have the same meanings as those given to the terms by sections 28:9–105(h), 28:1–201(38), and 28:9–105(i), respectively, of the District of Columbia Code. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 839; Dec. 30, 1963, 77 Stat. 769, Pub. L. 88–243, § 3.)

AMENDMENT

1963—Section 3 of act Dec. 30, 1963, amended section to read as above set out. For provisions of section prior to this amendment, see main volume of code.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, was made effective on Jan. 1, 1965. See note preceding Article I of subtitle I of title 28.

Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

§ 22–1301. False pretenses.

NOTES TO DECISIONS

Double jeopardy 6.50
Elements of crime 7.50
Evidence 9
Inconsistent offenses 11.50
Proceeds of check 21.50

6.50. Double jeopardy

The offense of obtaining motor vehicle by means of false pretenses in violation of District of Columbia Code and offense of transporting motor vehicle in interstate commerce knowing it to have been stolen in violation of Criminal Code of United States involve different elements and require different proof and are separate and distinct offenses even though same vehicle is subject of both acts, and prosecution and punishment of defendant for both offenses does not constitute double jeopardy. *United States* v. *J. W. Oates* (1963, 314 F. 2d 593, U.S. App. 4th Ct.).

7.50. Elements of crime

Five elements of crime of false presenses are: false representation, knowledge of falsity, intent to defraud, reliance by the defrauded party, and obtaining something of value. *S. J. Ciullo* v. *United States* (1963, 325 F. 2d 227, 117 U.S. App. D.C. 31).

Under false pretenses statute, it must be shown that alleged fraud would not have been accomplished but for misrepresentations made. *Id.*

9. Evidence

Evidence was sufficient to sustain conviction on charge of false pretenses in connection with a stock and worthless check transaction. *H. N. Kelly, Jr.* v. *United States* (1961, 297 F. 2d 437, 111 U.S. App. D.C. 360).

11.50. Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze* v. *United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

21.50. Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze* v. *United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

Chapter 14.—FORGERY—FRAUDS

§ 22-1401. Forgery.

NOTES TO DECISIONS

Evidence 7.50
Writings included 12

7.50. Evidence

Reception, in forgery prosecution, of exhibit consisting of card completed voluntarily by defendant while in custody on which he had listed prior arrests, received to permit comparison of handwriting with that on checks, was prejudicially erroneous and required new trial notwithstanding that it was not clear that jury saw card and that there was other evidence of his guilt. *R. E. Leigh* v. *United States* (1962, 308 F. 2d 345, 113 U.S. App. D.C. 390).

12. Writings included

Statutes proscribing forgery of any writing and any writing of public or private nature which might operate to prejudice another included defendant's forging of name of attorney on praecipes by which defendant entered appearances in cases, and forging of a registration card. *Morgan* v. *United States* (1962, 309 F. 2d 234, 114 U.S. App. D.C. 13).

§ 22-1406. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88-243, § 15(a)(1); eff. Jan. 1, 1965.

Section of act Apr. 28, 1904, 33 Stat. 554, ch. 1808, § 883a, as amended, dealt with sale or concealment of personal property by conditional vendee, with intent to defraud. See Uniform Commercial Code.

§ 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

NOTES TO DECISIONS

Elements of crime .50
Instructions 1.50
Recovery on bond 4.50

.50. Elements of crime

False representation, knowledge of falsity, and intent to defraud are sufficient to violate bad check statute when representation involves worthless check. *S. J. Ciullo* v. *United States* (1963, 325 F. 2d 227, —— U.S. App. D.C. ——).

1.50. Instructions

Refusal to charge, in prosecution for false pretenses, on lesser included offense of passing bad check was not error where defense testimony disclosed something had been obtained for value and that defrauded party had placed reliance on defendant's check. *S. J. Ciullo* v. *United States* (1963, 325 F. 2d 227, 117 U.S. App. D.C. 31).

4.50. Recovery on bond

The word "trading" in clause excluding trading loss from coverage of brokers' bond meant buying and selling of securities on customer's account, and loss occurring when brokers' employee accepted order to purchase substantial amount of stock for customer who gave bad check was such a loss. *L. Sade et al.* v. *National Surety Corp.* (1962, 203 F. Supp. 680).

Chapter 15.—GAMBLING

§ 22-1501. Lotteries—Promotion—Sale or possession of tickets.

NOTES TO DECISIONS

Admissibility of evidence—Arrest, search and seizure 2
Arrest, search and seizure—In general 4
Revocation of operator's permit 24.50

2. Admissibility of evidence—Arrest, search and seizure

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

4. Arrest, search and seizure—In general

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

24.50. Revocation of operator's permit

Revocation of petitioner's operator's permit for operating motor vehicle in conducting lottery and while possessing numbers slips was an abuse of discretion, where there was no evidence of any threat or danger to the safety of persons or property through petitioner's use of an automobile. *H. R. Stoneburner* v. *G. A. England, Director etc.* (D.C. App. 1964, 202 A. 2d 652).

§ 22-1502. Possession of lottery or policy tickets.

NOTES TO DECISIONS

Admissibility of evidence—Arrest, search and seizure 2
Arrest, search and seizure 3
Arrest, search and seizure—In general 4
Confrontation of informer 4.50
Sufficiency of evidence 17

2. Admissibility of evidence—Arrest, search and seizure

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

3. Arrest, search and seizure

Table drawer from which secretaries and other employees would take paper clips or pencils and which was located in messenger room where defendant, a messenger charged with violating statute prohibiting possession of numbers slips, had been temporarily assigned on daily basis and where he spent only 20 to 25 minutes of each hour was in effect open for common use by other employees of agency, and search of drawer did not violate defendant's right of privacy under the Fourth Amendment. *H. H. Freeman* v. *United States* (D.C. App. 1964, 201 A. 2d 22).

4. Arrest, search and seizure—In general

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

4.50. Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

17. Sufficiency of evidence

Evidence sustained conviction of receiving stolen goods. *O. M. Madre* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

§ 22–1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent Offenses.

* * * * *

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22–1501;

(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of 22–1504; or

(3) in maintaining any gambling premises,

shall be subject to seizure by any member of the Metropolitan Police force, or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the municipal court for the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Commissioners of the District of Columbia may, by order or by regulation, provide: *Provided,* That if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

* * * * *

(Sept. 21, 1961, 75 Stat. 540, Pub. L. 87–259, § 1.)

Change of Name

Act Oct. 23, 1962, section 1, eff. Jan. 1, 1963, changed the name of the Municipal Court for the District of Columbia to "District of Columbia Court of General Sessions". See section 11–751a.

Amendment

1961—Section 1 of act Sept. 21, 1961, amended subsection (c) so as to give the Municipal Court for the District of Columbia jurisdiction over libel actions involving such seized property regardless of its value and also providing that the action be brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants. The act made other amendments as well. See original subsection (c) in main volume.

Construction of Act Sept. 21, 1961, and Delegation of Authority

Section 2 of act Sept 21, 1961, provided that: "This Act [amending subsection (c)] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

NOTES TO DECISIONS

Arrest, search and seizure 2
Evidence—Admissibility 4
Public auction 12.50

2. Arrest, search and seizure

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

4. Evidence—Admissibility

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

12.50. Public auction

Even though sale at public auction, of motor vehicle seized because it was used for gambling purposes in violation of law, would result in insufficient funds to fully discharge lien, court was without power to direct transfer in specie as alternative to auction sale directed by statute. *General Motors Acceptance Corp.* v. *One 1962 Chevrolet Sedan, etc.* (D.C. App. 1963, 191 A. 2d 140).

§ 22–1508. Gambling pools and book making—Athletic contest defined.

NOTES TO DECISIONS

Evidence 4
Search and seizure 6

4. Evidence

Evidence which was seized in room wherein defendant, charged with violations of gambling laws, was arrested was admissible where it was relevant and material, although defendant claimed that others apparently not associated with unlawful venture occupied house and that warrant authorizing search of entire house was too broad in description of premises. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

6. Search and seizure

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Chapter 18.—HOUSEBREAKING

§ 22–1801. Definition and penalty.

NOTES TO DECISIONS

Admissibility of evidence 5
Arrest without warrant 3
Corpus delicti 3.50
Corroboration of evidence 3.51
Evidence 6
Admissibility 5
Sufficiency 6
Suppression 6.50
Impeachment 7.50
Indictment 8
Instructions 9
Intent 10
Judicial comment 11.50
Sufficiency of evidence 6
Suppression of evidence 6.50
Witnesses, evidence 7
Voluntary confession 15.50

3. Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances, conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr.* v. *United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

3.50. Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

3.51. Corroboration of evidence

In prosecution for rape and housebreaking, testimony of complainant's mother relating to telephone call made by complainant immediately after alleged attack was properly received in evidence. *B. Smith* v. *United States,* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

5. Evidence—Admissibility

Testimony by police officer concerning a conversation in which co-defendant stated that defendant was with him in a housebreaking was pure hearsay as to defendant and was not admissible against him and should not have been admitted at all when it was no essential part of co-defendant's own confession of guilt, and objection by defendant that testimony was not admissible was adequate, and its admission over objection was prejudicial. *D. Kramer* v. *United States* (1963, 317 F. 2d 114, 115 U.S. App. D.C. 50).

Where same evidence was used to connect defendant with crimes charged in counts two, three, and four as was employed in count one, and such evidence was ruled inadmissible on appeal from judgment of conviction on count one, new trial ordered by Court of Appeals for count one, should embrace all four counts. *United States* v. *J. A. Naples* (1962, 205 F. Supp. 944).

6. Sufficiency of evidence

In prosecution for housebreaking with intent to commit an assault evidence was sufficient for jury. *W. A. Baber* v. *United States* (1963, 324 F. 2d 390, 116 U.S. App. D.C. 358).

Evidence was sufficient to sustain conviction for attempted housebreaking. *J. Hart* v. *United States* (D.C. App. 1963, 187 A. 2d 329).

Evidence sustained defendant's conviction of housebreaking and petit larceny. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

6.50. Suppression of evidence

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs* v. *United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

7. Witnesses, evidence

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder* v. *United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

7.50. Impeachment

In prosecution for rape and housebreaking, wherein defendant admitted sex relations and testified that prosecutrix had consented, prosecutor was properly allowed to impeach defendant's credibility by reading affidavit, which defendant had made as indigent defendant to secure subpoena and in which defendant had stated that witness whom he sought to subpoena could establish alibi for him. *B. Smith* v. *United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

8. Indictment

Count of indictment charging housebreaking by entry of room with intent to violate Federal Communications Act would, in view of the nature of the offenses and in view of unusual character of punishments specified by Congress for Communications Act violations, be dismissed. *United States* v. *J. J. Frank et al.* (1964, 225 F. Supp. 573).

9. Instructions

Failure to charge on unlawful entry in prosecution for housebreaking, an offense which required finding of larcenous intent in addition to elements of unlawful entry, was harmless where jury found defendant guilty of larceny as well as of housebreaking. *C. W. Stewart* v. *United States* (1963, 324 F. 2d 443, 116 U.S. App. D.C. 411).

District court in housebreaking prosecution did not err in refusing instruction on lesser offenses, where request was not made until conclusion of charge and did not specify any particular offenses or show their inclusion within offense charged. *L. Britton* v. *United States* (1962, 301 F. 2d 531, 112 U.S. App. D.C. 207).

10. Intent

While in some circumstances elements of unlawful entry are comprehended within those of housebreaking, latter requires also finding of larcenous intent. *C. W. Stewart* v. *United States* (1963, 324 F. 2d 443, 116 U.S. App. D.C. 411).

11.50. Judicial comment

Comment by court, while co-defendant was on witness stand, that honest people are in bed at 3:00 in the morning was prejudicial and defendant, who was convicted of housebreaking, was entitled to a new trial. *R. Cunningham* v. *United States* (1962, 311 F. 2d 772, 114 U.S. App. D.C. 86).

15.50. Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23).

Chapter 20.—INDECENT PUBLICATIONS

§ 22-2001. Definition and penalty.

NOTES TO DECISIONS

Bill of particulars 1.50
Consolidation of charges 1.51
Instructions 3.50
Public trial 4.50
Sufficiency of evidence 6
Witnesses, evidence 28

1.50. Bill of particulars

Refusal to grant bill of particulars was not abuse of discretion where informations referred with specificity to times and places of performances claimed to violate obscene exhibitions statute, and defendant revealed complete familiarity with acts charged. *S. Yankowitz* v. *United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

1.51. Consolidation of charges

Defendant could be charged with three offenses of violating obscene exhibitions statute and was not entitled to proceed to trial on but one information, and the three separate informations were properly combined for trial, where there were three separate shows each involving elements essential to support violation of the statute. *S. Yankowitz* v. *United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

3.50. Instructions

Error, if any, in instructing that president of corporation operating restaurant with stage show consisting of three female impersonators could be convicted of violation of obscene exhibitions statute if he knew or should have known nature and character of the "premises" was harmless where jury was explicitly charged that intent was essential element of the crime. *S. Yankowitz* v. *United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

Statement in charge to jury that material charged in indictment was, in court's opinion, actually obscene in eyes of law did not require reversal of obscenity conviction, considering whole charge which left issue of obscenity for jury and stated that judge's comments on evidence were not binding on jury. *A. J. Heinecke* v. *United States* (1931, 294 F. 2d 727, 111 U.S. App. D.C. 98).

4.50. Public trial

In prosecution for possessing obscene pictures with intent to exhibit them, defendant's right to a public trial was not denied because when the alleged obscene film was shown in court the public, except newspaper reporters, were excluded. *B. W. Lancaster* v. *United States* (1961, 293 F. 2d 519, 110 U.S. App. D.C. 331).

6. Sufficiency of evidence

Evidence sustained conviction of charge of giving or participating, on three separate occasions, in public exhibitions containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency. *S. Yankowitz* v. *United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

28. Witnesses, evidence

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder* v. *United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22-2201. Grand larceny.

NOTES TO DECISIONS

Arrest without warrant 1.50
Inconsistent offenses 9.50
Instructions 12
Larceny by conversion 14.50
Proceeds of check 18.50
Search and seizure 20.50
Sufficiency of evidence 6

1.50. Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question to be answered is whether such an officer, in particular circumstances conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr.* v. *United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

6. Sufficiency of evidence

Evidence sustained conviction for grand larceny. *E. L. Jackson* v. *United States* (1964, 331 F. 2d 816, —— U.S. App. D.C. ——).

Television showroom manager was properly qualified as an expert as to value of television set which was stolen and manager's testimony was sufficient to prove value in excess of $100 as required for conviction for grand larceny. *J. Owens* v. *United States* (1963, 318 F. 2d 204, 115 U.S. App. D.C. 233).

9.50. Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze* v. *United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

12. Instructions

In grand larceny prosecution, instruction on petit larceny was unnecessary where there was nothing in evidence to indicate value of less than $100. *W. Chew* v. *United States* (1962, 298 F. 2d 334, 112 U.S. App. D.C. 6).

14.50. Larceny by conversion

One who obtains money from another upon representation that he will perform certain service therewith for the latter, intending at the time to convert the money, and actually converting it, to his own use, is guilty of larceny. *P. A. Skantze* v. *United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

18.50. Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze* v. *United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

20.50. Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr.* v. *United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

§ 22-2202. Petit larceny—Order of restitution.

NOTES TO DECISIONS

Arrest without warrant 1
Attempted petit larceny 1.50
Plea of guilt 9
Prosecutions statements 10.50
Search and seizure 11.50

1. Arrest without warrant

Probable cause is not to be evaluated from remote vantage point of library but from viewpoint of prudent and cautious police officer on scene at time, and question

to be answered is whether such an officer, in particular circumstances, conditioned by his observations and information and guided by whole of his police experience, reasonably could have believed that crime had been committed by person to be arrested. *S. Jackson, Jr.* v. *United States* (1962, 302 F. 2d 194, 112 U.S. App. D.C. 260).

Police are entitled to rely upon hearsay and upon various other factors which would not be admissible in evidence against accused at trial in determining whether there is probable cause for arrest. *Id.*

Total information available to officers, with respect to defendant charged with housebreaking and grand larceny, including separate accusations by two persons that he had been source of stolen gun, together with one of their recollections of rhinestone bracelet in defendant's closet, matching description of similar object on list of stolen property, reasonably warranted a belief that he had probably committed felonious acts in which gun and bracelet were originally stolen, and such, together with practical necessities of pursuit, justified his arrest without warrant. *Id.*

1.50. Attempted petit larceny

Attempted petit larceny is not a lesser included offense under petit larceny statute. *United States* v. *R. Pearson* (D.C. App. 1964, 202 A. 2d 392).

9. Plea of guilty

Failure to move to withdraw guilty plea to misdemeanor charge made while defendant was 20 years old would not foreclose him from making motion to withdraw plea on contention that it had not been knowingly and intelligently made as he had not understood that he could be sentenced under Youth Corrections Act for longer period than year sentence provided for misdemeanor charge but court reviewing conviction would remand case to give him opportunity to move district court for leave to withdraw plea. *R. B. Carter* v. *United States* (1962, 306 F. 2d 283, 113 U.S. App. D.C. 123).

10.50. Prosecutions statements

Prosecution's statement to jury that guilty verdict as to larceny would require guilty verdict as to assault was erroneous but was not plain error which affected substantial rights and, therefore, would not require reversal. *C. Harris* v. *United States* (D.C. App. 1964, 201 A. 532).

11.50. Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr.* v. *United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

§ 22-2203. Larceny after trust.

NOTES TO DECISIONS

Delivery of property .50
Independent contractor 3.50

.50. Delivery of property

For purposes of statute providing punishment for one guilty of larceny after trust, delivery of property to defendant by owner's vendor, acting for owner, was tantamount to delivery by owner; but even if it were not, defendant would not be entitled to acquittal, since statute does not require delivery by owner. *United States* v. *A. Manolias* (1961, 190 F. Supp. 234).

3.50. Independent contractor

Independent contractor, who had been entrusted with property and who had complete dominion and control over it for purpose of installing it in connection with electrical work which he had contracted to do, was not a mere custodian of property and could be convicted of larceny after trust. *United States* v. *A. Manolias* (1961, 190 F. Supp. 234).

§ 22-2204. Unauthorized use of vehicles.

NOTES TO DECISIONS

Evidence 4
Inference of guilt 4.50
Instructions 4.51
New trial 4.52
Prima facie rule 5
Review 6.50

4. Evidence

Evidence that fingerprint of defendant, who denied knowledge of the incident, was one of several found on outside of automobile that had been reported missing from dealer's service garage would not permit jury to find beyond a reasonable doubt that defendant was guilty of the unauthorized use of the motor vehicle. *E. R. Cephus* v. *United States* (1963, 324 F. 2d 893, 117 U.S. App. D.C. 15).

Evidence was sufficient to show ownership of automobile and corporate existence of owner and to sustain conviction of unauthorized use of automobile without consent of owner. *J. C. Dixon* v. *United States* (1961, 292 F. 2d 768, 110 U.S. App. D.C. 275).

Admission of evidence beyond scope of bill of particulars as to date when automobile was first known to be missing was not error, in prosecution for unauthorized use of automobile without consent of owner. *Id.*

4.50. Inference of guilt

Inference of interstate transportation which may be drawn from unexplained possession of stolen automobile in second state springs from and depends upon prior inference from such possession that possessor had stolen automobile in first state, and this is true even in federal districts where theft itself is not federal offense and is not charged in indictment. *T. O. Travers* v. *United States* (1964, 335 F. 2d 698, – U.S. App. D.C. ——). Where permitted inference of guilt of transporting stolen automobile from District of Columbia to Maryland depended on inference that defendant used automobile without authorization in District, defense request for instruction that if jury acquitted of unauthorized use in District it must acquit also of transporting interstate was erroneously denied, and error was prejudicial. *Id.*

4.51. Instructions

In prosecution for unauthorized use of automobile in District of Columbia and for transporting stolen automobile from District to Maryland, trial judge correctly permitted jury to infer guilt under both counts if it found defendant in possession of stolen automobile in Maryland and was not satisfied with explanation offered, and court correctly added that the longer the interval between the stealing and defendant's being found in possession, the weaker the inference. *T. O. Travers* v. *United States* (1964, 335 F. 2d 698, —— U.S. App. D.C. ——).

4.52. New trial

Where defendant was acquitted of unauthorized use of automobile in District of Columbia, reviewing court in setting aside conviction for transporting such automobile from District to Maryland could not remand for new trial on count for interstate transportation by means of inference, already rejected, that defendant used automobile without authorization in the District, but if government represented it had competent evidence of defendant's contact or connection with possession or use of automobile within District new trial could be conducted for interstate transportation. *T. O. Travers* v. *United States* (1964, 335 F. 2d 698, —— U.S. App. D.C. ——).

5. Prima facie rule

In prosecution for unauthorized use of a motor vehicle and interstate transportation of a stolen motor vehicle, charge that exclusive and unexplained possession of recently stolen property is "sufficient to support" a verdict of guilty of larceny was inadequate in that it failed to make clear that, if jury found exclusive possession by defendant of recently stolen goods, jury could, but was not required to, find that defendant had stolen the goods. *D. C. McKnight* v. *United States* (1962, 309 F. 2d 660, 114 U.S. App. D.C. 40).

6.50. Review

No errors affecting substantial rights occurred in a prosecution for unauthorized use of a vehicle without the owner's consent. *R. L. Jenkins* v. *United States* (1963, 324 F. 2d 399, 116 U.S. App. D.C. 367).

§ 22–2205. Receiving stolen goods.

NOTES TO DECISIONS

Evidence—Admissibility 3
Confrontation of informer 3.50
Corroboration 4
Guilty knowledge 4.50
Sufficiency 5

3. Evidence—Admissibility

Evidence that defendant, charged with receiving stolen property, had on previous occasion knowingly received stolen property was admissible for limited purpose of showing intent and guilty knowledge. *W. J. Blackburn* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 254).

3.50. Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

4. Corroboration

Uncorroborated testimony of shoplifters as to origin and ownership of goods, while normally of questionable reliability, is sufficient, if believed, to warrant conviction for receiving stolen goods. *M. A. Payne* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

4.50. Guilty knowledge

Accused's knowledge of goods' true character may be inferred from great disparity between sale price and prevailing price for similar or identical goods. *M. A. Payne* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

5. Sufficiency

Evidence sustained conviction of receiving stolen goods. *O. M. Madre* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

Chapter 23.—LIBEL—BLACKMAIL

§ 22–2305. Blackmail.

NOTES TO DECISIONS

5. Sufficiency

Evidence was sufficient to present question for jury as to whether defendant, who allegedly threatened to tell complaining witness' wife that he had caused pregnancy of another woman, was guilty of blackmail. *U. Salley* v. *United States* (1962, 306 F. 2d 814, 113 U.S. App. D.C. 207).

Chapter 24.—MURDER—MANSLAUGHTER

§ 22–2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

CROSS REFERENCES

Punishment for first and second degree murder, see § 22–2404.

NOTES TO DECISIONS

Admissibility of evidence 11
Arraignment 1
Confessions 5
Corpus delicti 7
Elements of crime 10
Evidence
Admissibility 11
Burden of proof 11.50
Sufficiency 12
Housebreaking 14
Indictment 15
Instructions 16
Jury 19
Prejudicial cross-examination 23.50
Prejudicial error 24
Verdict 35
Voluntary confession 37

1. Arraignment

Defendant's convictions for robbery and felony-murder would not be deemed secured through information obtained in violation of rule requiring prompt arraignment, or in violation of due process and speedy trial amendments to the federal Constitution, where defendant was presented in court on day he surrendered, no confession by defendant was introduced against him, evidence established all basic elements of the crimes, and defendant took the stand and described his participation in the robbery and fatal shooting. *W. C. Coleman* v. *United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

5. Confessions

Defendant accused of homicide failed to sustain burden of proving that his prior statement was improperly admitted at trial on ground that it was made after committing magistrate had failed to comply with rule relating to defendant's right to know charge against him and to retain counsel. *E. E. Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

7. Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

10. Elements of crime

The distinguishing characterictic of first degree murder is that it is a deliberate, premeditated, intentional killing, while killing in second degree murder may be intentional or unintentional, but it must, in either event, result from a willful and malicious act. *P. O. Hansborough* v. *United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

11. Admissibility of evidence

Testimony of eyewitness to crime of murder and robbery need not be suppressed because police had learned from defendants during period of illegal detention of the existence and identity of such eyewitness. *W. M. Smith, Jr., and R. Bowden* v. *United States* (1963, 324 F. 2d 879, 117 U.S. App. D.C. 1).

Evidence of one defendant's activities prior to alleged homicide was admissible in prosecution of three defendants for such homicide, in view of close proximity, in time, place and persons between such activities and subsequent homicide. *E. E. Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Where same evidence was used to connect defendant with crimes charged in counts two, three and four as was employed in count one, and such evidence was ruled inadmissible on appeal from judgment of conviction on count one, new trial ordered by Court of Appeals for count one, should embrace all four counts. *United States* v. *J. A. Naples* (1962, 205 F. Supp. 944).

11.50. Evidence—Burden of proof

Where defendant, accused of murder and robbery, introduced evidence that on date thereof he was suffering from mental disease or defect, it became duty of government to prove him sane beyond reasonable doubt at the time of commission of crimes charged. *H. S. Carey* v. *United States* (1961, 296 F. 2d 442, 111 U.S. App. D.C. 300).

12. ——Sufficiency

Evidence sustained conviction for second degree murder. *E. E. Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Evidence sustained conviction for robbery and felony-murder. *W. C. Coleman* v. *United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

14. Housebreaking

Killing of deceased by defendant as he was securing loot and preparing to leave premises into which he had broken was a homicide committed in perpetration of housebreaking. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

15. Indictment

Defendant could be convicted of second degree murder under felony-murder indictment even though indictment failed to allege "malice aforethought", where indictment contained the fully equivalent language that defendant "unlawfully and feloniously did murder" named person "by means of shooting him with a pistol". *L. Jackson* v.

United States (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

Second degree murder is an included offense under an indictment for felony-murder. *Id.*

An indictment charging a defendant with felony-murder, charged first degree murder, even though indictment omitted an allegation to the effect that accused was of sound memory and discretion. *W. C. Coleman* v. *United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

An indictment charging first degree murder was not defective, even though it did not contain the phrase "being of sound memory and discretion." *W. Jones* v. *United States* (1961, 296 F. 2d 398, 111 U.S. App. D.C. 276).

An allegation of sanity is not required in an indictment. *Id.*

16. Instructions

Trial judge in instructing jury as to difference between first degree murder and second degree murder, should endeavor to make it absolutely clear to jury that intentional killing may be second degree murder if premeditation and deliberation do not exist. *D. Tucker* v. *United States* (1963, 318 F. 2d 221, 115 U.S. App. D.C. 250).

Giving of instruction that second degree murder differs from first degree murder in that it may be committed either without purpose or intent to kill, or without premeditation and deliberation was not prejudicial error, in view of instructions in their entirety, in view of fact that court was careful to distinguish two degrees of murder in important respect that premeditation and deliberation are essential elements of first degree murder, in view of absence of objection or request for additional instruction, and in view of evidence and sentence of life imprisonment. *Id.*

Any error in submitting lesser included offense of manslaughter in prosecution on charge of first degree murder was not prejudicial when a verdict of manslaughter was not returned. *P. O. Hansborough* v. *United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Failing to instruct that jury might return a second degree murder verdict, was not error, in a felony-murder prosecution, where accused and his brother robbed a store proprietor, accused took some money and fled, and in immediate close and continuous pursuit, police officers followed accused up to instant of killing of one of the officers by accused. *W. C. Coleman* v. *United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

19. Jury

Evidence in homicide prosecution on issue of defendant's defense of insanity was for jury. *E. E. Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

Evidence, in felony-murder prosecution, presented jury question as to whether there was such an "arrest" of accused prior to killing of an officer, as to break essential link between the robbery and the killing, and such issue was properly submitted to jury under instructions explaining the issue and what constituted arrest. *W. C. Coleman* v. *United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

23.50. Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart* v. *United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

24. Prejudicial error

In prosecution of three defendants for homicide, request by counsel for one defendant that jury return lesser verdict than that charged in indictment was not prejudicial to another defendant who persistently denied any participation in offense, in view of subsequent instructions that evidence be considered separately as to each defendant and defendant's failure to object to such remarks. *E. E. Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, cert. denied 82 S. Ct. 1596).

35. Verdict

It was within prerogative of jury to acquit, on a felony-murder charge, a codefendant who was not present at scene of the killing, and to return a verdict of guilty of felony-murder as to defendant, even though both defendants were found guilty of the same robbery and even though jury could have returned a felony-murder verdict of guilty as to both defendants. *W. C. Coleman* v. *United States* (1961, 295 F. 2d 555, 111 U.S. App. D.C. 210).

37. Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23; rev'd 307 F. 2d 618).

§ 22-2402. Murder in the first degree—Placing obstructions upon or displacement of railroad.

CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

§ 22-2403. Murder in second degree.

CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

NOTES TO DECISIONS

Generally 1
Inconsistent verdicts 5.50
Indictment 6.50
Instructions 7

1. Generally

With certain statutory exceptions, when there is unjustified intentional killing, not premeditated but with malice, the offense is murder in the second degree and the same is true when there is unintentional killing which results from a willful and malicious act other than those specified in the first degree murder statute. *P. O. Hansborough* v. *United States* (1962, 308 F. 2d 645, 113 U.S. App. D.C. 392).

Where it could not be determined from evidence whether defendant intended to kill or merely wound his victim and it could not be said from record with legal certainty that interval between fight and the killing which followed was or was not of sufficient duration to provide time for premeditation required for first degree murder, court properly submitted lesser included offense of second degree murder in prosecution under indictment on charge of first degree murder. *Id.*

5.50. Inconsistent verdicts

Convictions for both robbery and second degree murder could stand even if they were inconsistent where the conviction of robbery was consistent with the evidence and the conviction of second degree murder was also consistent with the evidence. *L. Jackson* v. *United* States (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

6.50. Indictment

Defendant could be convicted of second degree murder under felony-murder indictment even though indictment failed to allege "malice aforethought", where indictment contained the fully equivalent language that defendant "unlawfully and feloneously did murder" named person "by means of shooting him with a pistol". *L. Jackson* v. *United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

Second degree murder is an included offense under an indictment for felony-murder. *Id.*

7. Instructions

Jury should be instructed that "mental disease" or "mental defect" includes any abnormal condition of the mind substantially affecting mental or emotional processes and substantially impairing behavior controls. *E. McDonald* v. *United States* (1962, 312 F. 2d 847, 114 U.S. App. D.C. 120, see also, 284 F. 2d 232, 109 U.S. App. D.C. 98).

Jury may be instructed, if there is testimony on point, that mental capacity or lack of it to distinguish right from wrong and ability to refrain from doing wrong or unlawful act may be considered in determining whether there is relationship between mental disease and act charged. *Id.*

Defendant, who relies on defense of insanity, is entitled to instruction that if acquitted by reason of insanity he will be confined in mental hospital until it is determined that he is no longer dangerous to himself or others, unless it affirmatively appears that defendant does not wish such instruction. *Id.*

Charge, in prosecution for second-degree murder, considered as a whole, properly conveyed to jury correct rules on murder and manslaughter. *B. L. Falls* v. *United States* (1963, 321 F. 2d 762, 116 U.S. App. D.C. 149).

Trial judge in instructing jury as to difference between first degree murder and second degree murder, should endeavor to make it absolutely clear to jury that intentional killing may be second degree murder if premediation and deliberation do not exist. *D. Tucker* v. *United States* (1963, 318 F. 2d 221, 115 U.S. App. D.C. 250).

Giving of instruction that second degree murder differs from first degree murder in that it may be committed either without purpose or intent to kill, or without premeditation and deliberation was not prejudicial error, in view of instructions in their entirety, in view of fact that court was careful to distinguish two degrees of murder in important respect that premeditation and deliberation are essential elements of first degree murder, in view of absence of objection or request for additional instruction, and in view of evidence and sentence of life imprisonment. *Id.*

§ 22–2404. Punishment for murder in first and second degrees.

The punishment of murder in the first degree shall be death by electrocution unless the jury by unanimous vote recommends life imprisonment; or if the jury, having determined by unanimous vote the guilt of the defendant as charged, is unable to agree as to punishment it shall inform the court and the court shall thereupon have jurisdiction to impose and shall impose either a sentence of death by electrocution or life imprisonment.

Notwithstanding any other provision of law, a person convicted of first degree murder and upon whom a sentence of life imprisonment is imposed shall be eligible for parole only after the expiration of twenty years from the date he commences to serve his sentence.

Whoever is guilty of murder in the second degree shall be imprisoned for life or not less than twenty years.

Cases tried prior to March 22, 1962, and which are before the court for the purpose of sentence or resentence shall be governed by the provisions of law in effect prior to March 22, 1962: *Provided,* That the judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment. Such a sentence of life imprisonment shall be in accordance with the provisions of this Act.

In any case tried under this Act as amended where the penalty prescribed by law upon conviction of the defendant is death except in cases otherwise provided, the jury returning a verdict of guilty may by unanimous vote fix the punishment at life imprisonment; and thereupon the court shall sentence him accordingly; but if the jury shall not thus prescribe the punishment the court shall sentence the defendant to suffer death by electrocution unless the jury by its verdict indicates that it is unable to agree upon the punishment, in which case the court shall sentence the defendant to death or life imprisonment. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 801; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1; Mar. 22, 1962, 76 Stat. 46, Pub. L. 87–423, § 1.)

Amendment

Act Mar. 22, 1962, amended section to read as above set out. Prior to this amendment the section read as follows: "The punishment of murder in the first degree shall be death by electrocution. The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years."

Internal References

Act referred to in this section is act of Mar. 22, 1962, and the basic act of Mar. 3, 1901, classified to various parts of this Code (see distribution tables). For other provisions of act Mar. 3, 1901, dealing with crimes which may be punishable by death or imprisonment for life, see sections 22–201, 22–2401 to 22–2403 and 22–2801.

Cross Reference

For other provisions providing minimum sentences upon imposition of life sentence, see § 24–203.

NOTES TO DECISIONS

Hearing on mental condition 2.50
Jurisdiction 3.48
Jury questions 3.49
Prejudicial cross-examination 3.50
Sentence 4.49
Sentence under prior statute 4.50

2.50. Hearing on mental condition

Where, following denial of certiorari by United States Supreme Court, defendant had moved both for reduction of death sentence and for a mental examination to determine unsoundness of mind based upon unrefuted affidavit of defendant's sister, district court should have caused to be developed adequate information as to the defendant's present mental condition before giving consideration to the motion in mitigation. *W. Jones* v. *United States* (1963, 327 F. 2d 867, 117 U.S. App. D.C. 169).

Investigation conducted by court through three court-appointed psychiatrists who had merely talked to defendant through cell bars for a brief time when defendant refused to cooperate with them formed no adequate basis for establishing truth or falsity of allegation of post-conviction unsoundness of mind contained in unrefuted affidavit of defendant's sister and required remand for further proceedings. *Id.*

3.48. Jurisdiction

The District of Columbia is not wtihin the "special maritime and territorial jurisdiction of the United States" within meaning of federal homicide statute, and murder prosecution and sentence predicated upon acts assertedly committed within District of Columbia is properly under district statute and not federal statute. *W. C. Coleman* v. *United States* (1964, 334 F. 2d 558, —— U.S. App. D.C. ——).

Challenge made for first time to Court of Appeals that judge who pronounced original sentence in homicide case was only judge competent to hear and act upon motions to reduce sentence or to vacate sentence came too late. *Id.*

Judge who deemed himself competent to act upon post trial motions to reduce sentence and vacate sentence, after judge who had pronounced sentence retired and undertock no new assignments, was not disqualified from passing upon motions predicated upon proviso permitting life sentences in murder cases before court for sentence or resentence by fact that he was not judge who had originally presided. *Id.*

3.49. Jury questions

Question of guilt of murder and question of punishment were properly submitted together, defendant being permitted to introduce character testimony, possibly relevant to choice of sentences, before submission. *United States* v. *J. A. White* (1963, 225 Supp. 514).

3.50 Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act

charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart* v. *United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

4.49. Sentence

Under statutory proviso that in homicide cases tried prior to March 22, 1962, and before court for sentence or resentence, judge, in sole discretion, may consider circumstances in mitigation and aggravation and make determination of whether case justifies life sentence while facts of crime are not without bearing, purpose is directed to possible existence of circumstances in mitigation, not of the crime, per se, but of punishment. *W. C. Coleman* v. *United States* (1964, 334 F. 2d 558, —— U.S. App. D.C. ——).

Under statutory proviso that in homicide cases tried prior to March 22, 1962, and before court for sentence or resentence, judge, in sole discretion, may consider circumstances in mitigation and aggravation and make determination of whether case justifies life sentence, judge was not circumscribed in inquiry he was intended to make. *Id.*

Under statutory proviso that in homicide cases tried prior to March 22, 1962, and before court for sentence or resentence, judge, in sole discretion, may consider circumstances in mitigation and aggravation and make determination of whether case justifies life sentence, Congress intended and due process considerations required appropriate hearing as to all factors bearing upon choice of sentences, and failure to accord hearing required reversal. *Id.*

4.50. Sentence under prior statute

Statute prospectively allowing for a sentence of life imprisonment for first degree murder on the unanimous recommendation of the jury, and authorizing the judge to decide between life imprisonment and electrocution if the jury should be unable to agree on a punishment did not impliedly vacate unexecuted death sentences imposed under prior mandatory death statute. *W. Jones* v. *United States* (1963, 327 F. 2d 867, 117 U.S. App. D.C. 169).

Where defendant had been convicted and given mandatory death sentence in 1959 under the then applicable statute and where, prior to execution thereof, court had become authorized by statute to exercise its discretion to consider circumstances in mitigation and to reduce to life imprisonment death sentences imposed under the prior mandatory statute, court had power to take into account whatever considerations it felt should be allowed weight in deciding the question of whether the accused should or should not be capitally punished. *Id.*

§ 22-2405. Punishment for manslaughter.

NOTES TO DECISIONS

Confession .50
Instructions 3.50
Right to counsel 7

.50. Confession

Oral, post-preliminary hearing confession which was obtained from defendant while he was held in jail and before he had secured counsel and which reaffirmed day old confession which was inadmissible because it was procured in violation of rule requiring defendant to be taken before committing magistrate without unnecessary delay was inadmissible. *J. W. Killough* v. *United States* (1962, 315 F. 2d 241, 114 U.S. App. D.C. 305).

Even though admission of oral post-arraignment confession was reversible error because it was fruit of illegal prearraignment confession, Court of Appeals would not set defendant free but reverse and remand for new trial. *Id.*

Oral confession following closely after earlier confession which is inadmissible for violation of rule requiring defendant to be brought before committing magistrate without unnecessary delay gives rise to rebuttable presumption that second is "fruit" of the first. *Id.*

Confession secured from defendant during thirty-four-hour period between his arrest and his appearance before commissioner would be suppressed because of such delay. *United States* v. *J. W. Killough* (1961, 193 F. Supp. 905).

Any confessions which result from illegal detention, no matter how voluntary or trustworthy, are excluded from evidence. *Id.*

A defendant's second confession, after appearance before a commissioner, following illegal detention, could not be excluded on theory it was product of a deliberate police attempt to subvert Rules of Criminal Procedure, where the confession was made to a police officer who did not approach defendant with purpose of securing a reaffirmation of invalid confessions defendant made prior to appearance before a committing magistrate. *Id.*

3.50. Instructions

Charge, in presecution for second degree murder, considered as a whole, properly conveyed to jury correct rules on murder and manslaughter. *B. L. Falls* v. *United States* (1963, 321 F. 2d 762, 116 U.S. App. D.C. 149).

7. Right to counsel

Police can interrogate a suspect before giving him an opportunity to secure counsel. *United States* v. *J. W. Killough* (1961, 193 F. Supp. 905).

Action of an official in allowing a police officer to see defendant during adjournment of a preliminary hearing, but before he had seen counsel was not a violation of the commitment order, the Federal Rules of Criminal Procedure, and the constitutional bar against self-incrimination and guarantee of right to counsel, and did not render admissions made by defendant during such conversation inadmissible. *Id.*

The Rules of Criminal Procedure give an accused who has funds to hire counsel the right to do so, and right to have a preliminary hearing, should he desire one with counsel's assistance, postponed until he secures that assistance.

Constitutional privilege against self-incrimination did not give illegally detained defendant an absolute right to see counsel before a valid confession could be given by him, or to have counsel present with him at time he made a confession. *Id.*

Chapter 25.—PERJURY

§ 22-2501. Perjury—Subornation of perjury.

NOTES TO DECISIONS

Attorney's oath 2.50
Predication of indictment 20.50
Sufficiency of indictment 23.50

2.50. Attorney's oath

Falsely taking oath of admission pursuant to Municipal Court Civil Rule, which states what persons the bar of the Municipal Court should consist of and prescribes oath or affirmation to be taken by such person, violated statute proscribing perjury and subornation of perjury. *Morgan* v. *United States* (1962, 309 F. 2d 234, 114 U.S. App. D.C. 13).

20.50. Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson* v. *United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

23.50. Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson* v. *United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

Chapter 27.—PROSTITUTION—PANDERING

§ 22-2701. Prostitution—Inviting for purposes of, prohibited.

NOTES TO DECISIONS

Corroboration of evidence 8
Evidence 4
Sentence 18.50

4. Evidence

Evidence sustained convictions for soliciting for lewd and immoral purposes. *Willis and Thompson* v. *District of Columbia* (D.C. App. 1964, 198 A. 2d 751).

Defendants' testimony did not support claim of entrapment as a matter of law. *Id.*

Evidence sustained conviction of soliciting for purpose of prostitution. *R. Golden* v. *United States* (D.C. Mun. App. 1961, 167 A. 2d 796).

8. Corroboration of evidence

Trial court could properly find defendant guilty of soliciting for lewd and immoral purpose on testimony of officer, uncontradicted as to time and place, that he noticed defendant, dressed in female attire, motioning him to curb, that defendant offered to perform act of perversion for stated amount, corroborated by testimony of another officer who saw defendant conversing with arresting officer, where there was no evidence introduced of defendant's good character or denial that he was dressed in female attire. *H. H. Berneau* v. *United States* (D.C. App. 1963, 188 A. 2d 301).

Conviction for soliciting another male for a lewd and immoral purpose was based on sufficient corroboration as to time, place and circumstances. *N. H. Alexander* v. *United States* (D.C. App. 1963, 187 A. 2d 901).

18.50. Sentence

Review of vagrancy convictions was not necessary when sentences for vagrancy were ordered to run concurrently with proper sentences for soliciting for lewd and immoral purposes. *Willis and Thompson* v. *District of Columbia* (D.C. App. 1964, 198 A. 2d 751).

Defendant was not entitled to relief from sentence imposed upon failure to pay fine imposed in addition to maximum imprisonment authorized as punishment on any theory that if she were indigent, alternative sentence coupled with primary sentence would be tantamount to sentence in excess of that authorized and that court should have, as part of sentencing procedure, inquired into her ability to pay where record revealed nothing as to her financial resources, she did not claim inability to pay fine, and there was nothing to indicate that court used alternative sentence to accomplish imprisonment for term longer than permitted by statute. *D. Henderson* v. *United States* (D.C. App. 1963, 189 A. 2d 132).

§ 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

NOTES TO DECISIONS

3.50. Instructions

Where trial court had not reviewed or commented upon evidence in his charge to jury and elements essential to convict were explained without reference to any aspect of evidence and counsel prior to charge failed to formulate desired instruction, refusing oral request that the charge be enlarged to include a specific reference to defendant's theory of the evidence was not reversible error. *C. O. Clarke* v. *United States* (1962, 301 F. 2d 543, 112 U.S. App. D.C. 219).

§ 22-2707. Procurer—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.

NOTES TO DECISIONS

9.50. Fair trial

Defendants were not denied fair trial in prosecutions for violating Mann Act and for receiving money for arranging for acts of prostitution, because of actions of trial court and Assistant United States Attorney. *J. A. Fabianich and M. E. Fabianich* v. *United States* (1962, 302 F. 2d 904, 112 U.S. App. D.C. 319).

Sentences were valid, though trial court allegedly erred in denying motions for acquittal on certain counts, where there were concurrent sentences, and convictions under other courts were not challenged. *Id.*

§ 22-2722. Keeping bawdy or disorderly houses.

Whoever is convicted of an affray or of keeping a bawdy or disorderly house in the District shall be fined not more than $500 or imprisoned not more than one year, or both. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a).)

AMENDMENT

1963—Section 11(a) of act Dec. 23, 1963, amended section to read as above set out, effective Jan. 1, 1964.

NOTES TO DECISIONS

Arrest 2
Disorderly house 3.50
Evidence 4

2. Arrest

Affidavits supporting application for warrant for arrest for operation of disorderly house alleged sufficient facts to establish probable cause for arrest. *W. H. Wood and M. J. Blue* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 563).

Where apparent facts set out in affidavits supporting application for warrant for arrest are such that reasonably discreet and prudent man would be lead to believe that offense charged was committed, there is probable cause justifying issuance of warrant; determination whether offense has been committed or evidence tendered is so strong as to justify ultimate conviction is not necessary. *Id.*

Parade of males into defendant's apartment and her past criminal record as convicted madam and vagrant provided adequate justification for issuance of warrant for arrest resulting in prosecution for keeping disorderly house. *C. J. Bennett, etc.* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

3.50. Disorderly house

"Disorderly house" is one where acts are performed which tend to corrupt morals of community or promote breaches of peace. *M. A. Payne* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

Elements necessary to sustain conviction for maintaining disorderly house are that acts are contrary to law and subversive of public morals, that house is commonly resorted to for commission of such acts, and that proprietor knows, or should in reason, know facts and either procures it to be done, connives at it, or does not prevent it. *Id.*

Conduct sufficient to sustain conviction for maintaining disorderly house need not disrupt peace and quiet or be open to public observation so long as it would be offensive to public sensibilities if its presence in community were generally known. *Id.*

4. Evidence

Registration cards seized in search of tourist home in connection with arrest for operating it as disorderly house were admissible as having direct bearing upon the operation. *W. H. Wood and M. J. Blue* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d. 563).

Use of chart, which was not admitted as exhibit or taken to jury room, in connection with testimony concerning registration cards taken from tourist home allegedly used as disorderly house, in order that jury could more conveniently view, during trial, information on cards, was not prejudicial. *Id.*

Evidence supported conviction for operating as a disorderly house a tourist home to which constant stream of couples came, especially late at night, on foot, in taxis, or by private automobile, without luggage and in many instances oddly dressed and at which they stayed for brief periods not exceeding two and one-half hours. *Id.*

Evidence sustained conviction for keeping disorderly house. *C. J. Bennett, etc.* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

Evidence sustained conviction of maintaining disorderly house. *M. A. Payne* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

Testimony on single act of prostitution in house and unlawful sales prior to period specified in information were admissible in prosecution for maintaining disorderly house. *Id.*

Chapter 28.—RAPE

§ 22-2801. Definition and penalty.

CROSS REFERENCE

Punishment for first and second degree murder, see § 22-2404.

NOTES TO DECISIONS

Corroboration of evidence 11
Sufficiency 15
Evidence—Suppression 15.50
Impeachment 13.50
Prejudicial remarks 20.50

11. Corroboration of evidence

The failure to instruct that corroboration of identity was required in proof of rape required reversal of conviction as to a defendant who preserved the issue by motion for judgment of acquittal at close of plaintiff's evidence and as to whom corroboration was then lacking; however, allowing case against two codefendants to go to jury without such instruction was not plain error, where the two codefendants did not except to court's charge on corroboration of identity and there was evidence in government's case on which jury could have found corroboration as to the two codefendants. *Franklin, Price and Brooks* v. *United States* (1964, 330 F. 2d 205, 117 U.S. App. D.C. 331).

Where government's own evidence showed that victim was raped several times, merely showing that she was raped was no corroboration of a defendant as one of the offenders. *Id.*

In prosecution for rape and housebreaking, testimony of complainant's mother relating to telephone call made by complainant immediately after alleged attack was properly received in evidence. *B. Smith* v. *United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

13.50. Impeachment

In prosecution for rape and housebreaking, wherein defendant admitted sex relations and testified that prosecutrix had consented, prosecutor was properly allowed to impeach defendant's credibility by reading affidavit, which defendant had made as indigent defendant to secure subpoena and in which defendant had stated that witness whom he sought to subpoena could establish alibi for him. *B. Smith* v. *United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

15. Sufficiency

Whether evidence of joint participation in rape was sufficient and whether instruction on subject was deficient did not have to be determined where evidence indicated that certain defendants did commit rape and that the other defendant aided and abetted. *Franklin, Price and Brooks* v. *United States* (1964, 330 F. 2d 205, 117 U.S. App. D.C. 331).

15.50. Evidence—Suppression

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs* v. *United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

20.50. Prejudicial remarks

In prosecution for rape and housebreaking, prosecutor's remark to jury as to defendant's objection to admission of hospital records of physical examination of prosecutrix was improper and required new trial where records were not admitted and examination in fact showed no evidence of rape, and thus any possible or probable implication to jury that such records would be damaging to defendant was misleading. *B. Smith* v. *United States* (1962, 312 F. 2d 867, 114 U.S. App. D.C. 140).

Chapter 29.—ROBBERY

§ 22-2901. Robbery.

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1. Assistance of counsel

Failure of United States Commissioner to assign counsel to defendant at preliminary proceeding and use at trial of testimony that defendant had confessed to police after the preliminary hearing had been continued for four weeks could not serve as a basis for reversal of conviction where neither point had been raised in district court, no objection had been made upon introduction of the defendant's oral confession, and no relief had been asked below. *L. Moon, Jr.* v. *United States* (1963, 317 F. 2d 544, 115 U.S. App. D.C. 133).

3.50. Cross-examination

Cross-examination of defendant's wife, concerning her alleged statements to officers, although she had said nothing of these matters on direct examination and they did not directly challenge her direct testimony, was not proper on any ground and required reversal, despite sufficiency of other evidence and lack of objection, and was not cured by instruction that testimony could be considered only on question of wife's credibility. *C. Dixon* v. *United States* (1962, 303 F. 2d 226, 112 U.S. App. D.C. 366).

6. Elements of offense

Robbery conviction requires proof of taking from person of another by sudden or stealthy seizure or snatching, or by putting in fear. *G. R. Hunt* v. *United States* (1963, 316 F. 2d 642, 115 U.S. App. D.C. 1).

7. Evidence—Admissibility

Evidence that defendant, who was charged with robbery, at time of his apprehension had in his possession an automobile driver's license bearing a name other than his own was irrelevant, but admission of such evidence did not require a reversal when jury trial was waived and evidence of guilt was strong. *L. Fennel* v. *United States* (1963, 320 F. 2d 784, 116 U.S. App. D.C. 62).

8. Burden of proof

Where defendant, accused of murder and robbery, introduced evidence that on date thereof he was suffering from mental disease or defect, it became duty of government to prove him sane beyond reasonable doubt at the time of commission of crimes charged. *H. S. Carey* v. *United States* (1961, 296 F. 2d 422, 111 U.S. App. D.C. 300).

10. Production of evidence

In robbery prosecution, wherein after direct examination of witness called by the United States was concluded, defendant moved for production of witness' statement made to the police, and when prosecutor indicated he did not have the statement court told counsel to ask policeman for the statement when he "takes the stand," such action was error since the statute requires production of witness' statement for use in his cross-examination, and court by its action required defendant's counsel to proceed with cross-examination of witness without it. *W. H. Leach* v. *United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

In robbery prosecution, wherein after direct examination of witness called by the United States was concluded, defendant moved for production of witness' statement made to police, error in instructing counsel

to ask policeman for statement when he "takes the stand" was harmless where when policeman took the stand entire police file was produced and made available to defense counsel, and after counsel read the file, the matter of the statement was not pursued. *Id.*

11. Sufficiency of evidence

Evidence was sufficient to permit convictions under indictment charging robbery and assault with intent to commit robbery. *J. Rogers and H. Waldon* v. *United States* (1963, 318 F. 2d 223, 115 U.S. App. D.C. 252).

Evidence sustained conviction for robbery. *R. X. Williams* v. *United States* (1963, 321 F. 2d 744, 116 U.S. App. D.C. 131).

12. Suppression of evidence

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs* v. *United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrent issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

15.50. Inconsistent verdicts

Convictions for both robbery and second degree murder could stand even if they were inconsistent where the conviction of robbery was consistent with the evidence and the conviction of second degree murder was also consistent with the evidence. *L. Jackson* v. *United States* (1962, 313 F. 2d 572, 114 U.S. App. D.C. 181).

16. Indictment

Crimes of robbery and of attempted robbery are similar in nature and joinder in indictment is permissible. *N. L. Drew* v. *United States* (1964, 331 F. 2d 85, —— U.S. App. D.C. ——).

17. Instructions

Instruction in robbery prosecution, wherein there was no direct evidence that complaining witness' wallet had been stolen but witness testified that he had felt a slight jostle and had been told that two people were running down street, that verdict would be relatively simple to arrive at once jury decided which of witnesses were telling truth, was plain error requiring reversal, there being no instruction that different inferences might be drawn from complaining witness' testimony even if it were believed. *L. C. Miller, Jr.* v. *United States* (1963, 320 F. 2d 767, 116 U.S. App. D.C. 45).

Had defendant, who was charged with taking billfold from pocketbook, but who, upon search conducted immediately after alleged robbery, was not found to have billfold, requested charge on lesser included offense of attempted robbery, its denial would have been reversible error, but failure to give instruction was not plain error. *R. X. Williams* v. *United States* (1963, 321 F. 2d 744, 116 U.S. App. D.C. 131).

Failure to give instruction on circumstantial evidence to effect that unless there is substantial evidence of facts which exclude every reasonable hypothesis but that of guilt, verdict must be not guilty was not plain error in robbery case. *Id.*

Instructions which may have implied that jury could infer guilt from circumstances without first resolving conflicts in testimony over whether circumstances had actually occurred were not plain error in view of charge considered as whole. *Id.*

19. New trial

Since evidence was sufficient to raise jury issue as to robbery, new trial, ordered because of trial court's error in refusing to instruct jury on lesser included offense of larceny, would not be limited to larceny charge only. *E. A, Graves* v. *United States* (1963, 318 F. 2d 265, 115 U.S. App. D.C. 294).

19.50. "Person" defined

Victim of homicide, even though dead, was "person" within robbery statute under circumstances where time interval between stabbing and taking of money from her body was short, and even if intent of taking money did not occur until after she was dead perpetrator could properly be convicted of robbery. *H. S. Carey* v. *United States* (1961, 296 F. 2d 422, 111 U.S .App. D.C. 300).

19.51. Prejudicial error

Denial of motion of defendant that court obtain assistance of medical expert to examine witness, who identified defendant as robber, and who allegedly had defective eyesight, and to testify concerning vision of witness was not prejudicial error, where matter of vision of witness was adequately explored on cross-examination, and there was other strong identifying testimony. *E. G. Robinson* v. *United States* (1963, 318 F. 2d 272, 115 U.S. App. D.C. 301).

20.50. Pre-sentence investigation

Imposition of maximum sentence just after guilty verdicts were rendered against defendants, one of whom was 21 years of age and the other 19 years of age, was improper, vacation of sentences at suggestion of United States and reimposition thereafter of same sentences was not curative of procedure followed, sentences must be vacated and pre-sentence investigation must be made with opportunity to present information in mitigation of punishment. *Peters and Mills* v. *United States* (1962, 307 F. 2d 193, 113 U.S. App. D.C. 236).

22. Questions for jury

Jury was justified in finding that assault with intent to commit robbery and robbery were not product of alleged mental disease of defendant, where psychiatrist testified that defendant was suffering from low grade mental illness predisposing to psychosis particularly when defendant was under influence of large amounts of alcohol, and evidence indicated that defendant was completely sober at time of alleged offenses. *T. Hawkins* v. *United States* (1962, 310 F. 2d 849, 114 U.S. App. D.C. 44).

Evidence upon question whether defendant was not guilty of robbery by reason of insanity was sufficient to raise jury question. *E. C. Campbell* v. *United States* (1962, 307 F. 2d 597, 113 U.S. App. D.C. 260).

26. Sentence

Under statute providing that sentence begins to run from date prisoner is received at penal institution for service of sentence, sentence was not illegal, within rule providing that court may correct illegal sentence at any time, merely because court in imposing maximum sentence for robbery gave no credit for time spent in custody before sentence. *T. Williams* v. *United States* (1964, 335 F. 2d 290, —— U.S. App. D.C. ——).

Where sentence imposed was within that allowed by statute, relief was available to defendant, in absence of relief at hands of district court, only in executive branch of government. *Id.*

Where at time of sentence upon robbery conviction defendant stated to court that he was "under a psychiatrist for one year" in 1935, that he "had a mental disorder from 1952," that he was "under a doctor in the state prison at Trenton" in 1952, and that all but 63 days of the past 31 years, since he was 19 years old, he had spent in various prisons, and court imposed the maximum penalty without responding to defendant's request for a mental examination prior to sentence, case would be remanded to district court for reconsideration of the sentence. *Wm. H. Leach* v. *United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

On remand for consideration of sentence, district court refused to disturb sentence previously imposed on defendant, who has extensive criminal record, following a third conviction for armed robbery, in view of probation office report failing to refer defendant to legal psychiatric services and recommending that probation be denied and evidence which failed to indicate that defendant was suffering from mental disease. *United States* v. *W. H. Leach* (1963, 218 F. Supp. 271).

27. Trial procedure

Viewed in context of whole charge, trial court's statements refusing to accept note that jury was deadlocked after only two hours deliberation and that jury should resume deliberations the next day were not coercive or an improper comment upon the evidence to jury which found defendant guilty on robbery count and not guilty on count charging assault with intent to commit robbery. *M. C. Jenkins* v. *United States* (1964, 330 F. 2d 220, 117 U.S. App. D.C. 346).

28.50. Validity of arrest

Allegations of lack of probable cause for defendant's arrest were not sufficient to warrant remand for hearing on that issue, where only attack on arrest related to reliability of informant upon whose lead defendants were arrested for robbery and informant's reliability had been established at a hearing in a related case *W. Cooper and V. Cooper* v. *United States* (1963, 331 F. 2d 776, —— U.S. App. D.C. ——).

§ 22-2902. Attempt to commit robbery.

NOTES TO DECISIONS

3. Indictment

There was prejudice in joinder of crimes of robbery and attempted robbery and separate trials should have been granted, where the similarities were not so close that proof of one crime would establish proof of the other if there were separate trials, and the jury was confused and was unable to treat the evidence relevant to each charge separately and distinctly. *Nathan L. Drew* v. *United States* (1964, 331 F. 2d 85, —— U.S. App. D.C. ——).

Chapter 31.—TRESPASS—INJURIES TO PROPERTY

§ 22-3102. Unlawful entry on property.

NOTES TO DECISIONS

Abuse of discretion .50
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Reasonable cause for arrest 6

.50. Abuse of discretion

Record did not disclose abuse of discretion in denial of defendants' motion for new trial in prosecution for unlawful entry. *A. Fatemi et al.* v. *United States* (D.C. App. 1963, 192 A. 2d 525).

.51. Diplomatic immunity

District of Columbia police had authority to enter embassy and arrest foreign nationals, who had no claim to immunity and who were violating local law by trespassing in embassy, at Minister's request. *A. Fatemi et al.* v. *United States* (D.C. App. 1963, 192 A. 2d 525).

6. Reasonable cause for arrest

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

§ 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

NOTES TO DECISIONS

Prosecutions by United States Attorney 3.50
Variance in proof 5

3.50. Prosecutions by United States Attorney

United States Attorney for District of Columbia rather than Corporation Counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed $100, or imprisonment not to exceed six months, or both. *District of Columbia* v. *Moody, Hill and Hamilton* (1962, 304 F. 2d 943, 113 U.S. App. D.C. 67).

5. Variance in proof

There was no fatal variance between information charging defendant with defacing doors of elevator in private building by drawing, marking and writing sign or figure thereon and proof which showed that defendant, who did not ask for any further particulars, put stickers on door. *J. Patler, etc.* v. *District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 508).

Chapter 32.—WEAPONS

§ 22-3204. Carrying concealed weapons.

NOTES TO DECISIONS

Construction with other laws 4
Illegal search 9.50
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4. Construction with other laws

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license * * * or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. *United States* v. *J. H. Parker* (D.C. Mun. App. 1962, 185 A. 2d 913).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. *Id.*

9.50. Illegal search

Impounding of automobile, which motorist had parked in front of police station after being ordered to follow police officers to police precinct, was not authorized under regulation permitting impounding of unattended vehicles found parked in violation of traffic regulation, and pistol discovered in search of automobile was not admissible. *D. A. Williams* v. *United States* (D.C. Mun. App. 1961, 170 A. 2d 233).

19.50. Search and seizure

Police, who received information that there had been a holdup and robbery of a motel and who saw defendant, who was wearing outer clothing fitting description of one of robbers, in a restaurant in vicinity in company of a known felon, and who observed a bulge under defendant's shirt resembling a pistol, had probable cause to arrest and search defendant, and pistol discovered in course of search was admissible in prosecution on charge of carrying a pistol. *T. A. Teresi* v. *United States* (D.C. App. 1963, 187 A. 2d 492).

Removal of unlicensed pistol from floor of parked automobile did not constitute an unreasonable search and seizure where officer, who discovered pistol lying in plain view on automobile floor, was making an investigation at scene of reported burglary and after noticing defendant's keys in ignition in violation of law had opened automobile door to remove keys. *C. A. Campbell* v. *United States* (D.C. Mun. App. 1961, 174 A. 2d 87).

21. Sentences

Trial court did not abuse discretion in sentencing defendant, who had entered plea of guilty and whose motions for continuation of bail and for immediate sentencing were denied, to one year imprisonment without crediting him for 52 days which had elapsed between plea of guilty and date on which he was sentenced. *R. W. Epperson* v. *S. A. Anderson, Supt. etc.* (1963, 326 F. 2d 665, 117 U.S. App. D.C. 122).

Determination of whether evidence was sufficient to sustain conviction for carrying a dangerous weapon without a license would not be made where defendant was convicted upon sufficient evidence of a different offense and sentences imposed upon defendant for the two offenses ran concurrently. *J. Hart* v. *United States* (D.C. App. 1963, 187 A. 2d 329).

22. Probable cause for arrest

Officer had probable cause to believe that housebreaking had been committed and that defendant was offender, so as to justify arrest without warrant in course of which was discovered a pistol giving rise to prosecution for carrying weapon without license, in view of strong belief communicated to officer by one who knew defendant that defendant was one who had broken into such individual's mother's home, and in view of officer's observation and other information he learned from both such individual and defendant, and accordingly pistol was admissible in evidence. *J. E. Paris* v. *United States* (1963, 321 F. 2d 378, 116 U.S. App. D.C. 112).

There is a difference between what is required to prove guilt in criminal case and what is required to show probable cause for arrest or search, and, in dealing with probable cause, court deals with probabilities, they are not technical but are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *Id.*

§ 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.

NOTES TO DECISIONS

1. Construction with other laws

The statute making it a crime for a person to carry "elsewhere" than in his home "or place of business or on land possessed by him a pistol without a license * * * or any deadly or dangerous weapon capable of being so concealed," and the statute prohibiting possession "anywhere" with intent to use unlawfully against another an imitation pistol reflect the purpose of Congress to strengthen the existing law and tighten controls over the possession of dangerous weapons and each has distinctive objects of correction. *United States* v. *J. H. Parker* (D.C. Mun. App. 1962, 185 A. 2d 913).

The statute prohibiting the possession "anywhere" with intent to use unlawfully against another an imitation pistol or other "dangerous weapon" embraces the possession of a real pistol and possession of a pistol may be charged under such statute. *Id.*

§ 22-3215. Penalties.

NOTES TO DECISIONS

4. Sentences

Sentences of 360 days for carrying pistol without license was not excessive but was legally permissible under statute providing that applicable penalty was fine of not more than $1,000 or imprisonment for not more than one year, or both. *F. R. Gillard* v. *United States* (D.C. App. 1964, 202 A. 2d 776).

A legally permissible sentence is not subject to review or control by District of Columbia Court of Appeals. *Id.*

Chapter 33.—VAGRANCY

§ 22-3302. "Vagrants" defined.

NOTES TO DECISIONS

Admissibility of evidence 8
Authority of police officer 1
Constitutionality 1.50
Evidence 7
Lawful means of support 13
Nature of vagrancy 14
Poverty not a crime 14.50
Purpose 16
Sufficiency of evidence 11

1. Authority of police officer

That, within period of about three weeks, defendant on four occasions at late hours was observed in downtown area many blocks from home, on one occasion was talking to male in dark alley, on another was walking in parking lot, on another was in company of known prostitute, and on another was in company of convicted felon, gave reasonable ground for officer's belief that her presence on streets was not for any legitimate purpose and was sufficient justification for calling upon her to account for her actions and for her arrest where she failed to do so. *E. R. Harris* v. *District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

That defendant was in taxicab when officer stopped her and was not then wandering about streets did not preclude him from stopping her and questioning her, where it could be inferred that hailing and boarding cab were part of effort to avoid questioning by police. *Id.*

A person found loitering has duty to give a good account of himself. *C. H. Kelley* v. *United States* (1961, 298 F. 2d 310, 111 U.S. App. D.C. 396).

1.50. Constitutionality

Statute providing that any person leading "immoral or profligate life" was has no lawful employment and who has no lawful means of support realized from lawful occupation or source is vagrant is not unconstitutional on ground that words "immoral or profligate life" are too vague and uncertain. *E. J. Hicks* v. *District of Columbia* (D.C. App. 1964, 197 A. 2d 154).

7. Evidence

Evidence was insufficient to sustain vagrancy conviction. *E. R. Harris* v. *District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 359).

Evidence sustained conviction of being a vagrant. *Y. Pinkney* v. *District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 198).

8. Admissibility of evidence

Police, who were cruising area, had probable cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. *A. O. Freeman* v. *United States* (1963, 322 F. 2d 426, 116 U.S. App. D.C. 213).

Admission of testimony, at trial judge's request, that police officer had previously arrested defendant for narcotics violation was error which was prejudicial to defendant who did not take stand during his prosecution for narcotics violation. *Id.*

For purposes of showing a continued course of immorality in vagrancy prosecution, prior acts and admissions of defendant showing defendant's acts to be part of a continuous operation were properly admitted. *G. Coley etc.* v. *District of Columbia* (D.C. Mun. App. 1962, 177 A. 2d 889).

Evidence sustained finding of habitually immoral conduct on part of defendant and sustained conviction for vagrancy. *Id.*

11. Sufficiency of evidence

In absence of evidence that defendant under either federal or local law would suffer further penalties or disabilities from judgment of conviction or consequences collateral thereto having material effect on present legal rights, conviction for misdemeanor after service of part of sentence imposed and suspension of the balance became moot, and reviewing court had no power to consider appeal upon its merits. *E. R. Thompson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 92).

Evidence was sufficient to sustain conviction on charge of vagrancy. *F. F. Walker* v. *District of Columbia* (D.C. App. 1963, 196 A. 2d 92).

Testimony of police officers that defendant was idling in a park at late hour, that he was a known felon and that he wanted to "roll queers" was sufficient to establish elements of charge of vagrancy, and burden then shifted to defendant to establish that he had a lawful employment or a lawful means of support realized from a lawful occupation or source. *Id.*

Evidence sustained vagrancy conviction. *E. R. Harris* v. *District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

Vagrancy conviction cannot stand without evidence of course of conduct or mode of living or status prejudicial to public welfare. *B. Drew* v. *District of Columbia* (D.C. App. 1963, 187 A. 2d 325).

Evidence did not sustain conviction of vagrancy, absent evidence of course of conduct or mode of living or status prejudicial to public welfare. *Id.*

Evidence was insufficient to prove elements necessary to support conviction for vagrancy under District of Columbia code denominating as vagrants persons leading immoral life and who have no lawful employment or lawful means of support and persons who operate or who are employed in houses of ill fame. *Baker and Fredricksen* v. *District of Columbia* (D.C. Mun App. 1962, 184 A. 2d 198).

13. Lawful means of support

Burden of defendants, charged with vagrancy, or proving lawful means of support does not arise until prosecution has proven other elements of offense. *Baker and Fredricksen* v. *District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 198).

14. Nature of vagrancy

"Vagrancy" consists of a continued course of immorality, a pattern in iniquity, rather than a solitary incidence of wrong-doing. *G. Coley etc.* v. *District of Columbia* (D.C. Mun. App. 1962, 177 A. 2d 889).

14.50. Poverty not a crime

Statute providing that any person leading immoral or profligate life who has no lawful employment and who has no lawful means of support realized from lawful occupation or source is vagrant does not make criminal the status or condition of poverty and unemployment. *E. J. Hicks* v. *District of Columbia* (D.C. App. 1964, 197 A. 2d 154).

16. Purpose

Purpose of vagrancy statute is to prevent crime likely to flow from vagrant's mode of life, and if officer were precluded from arresting thereunder until crime was committed, its purpose would wholly fail. *E. R. Harris* v. *District of Columbia* (D.C. App. 1963, 192 A. 2d 814).

§ 22–3304. Penalty—Conditions imposed by court.

NOTES TO DECISIONS

1. Indigent prisoners, discharge of

Sentence for violation of District of Columbia vagrancy statute was for violation of "law of United States" within Indigent Prisoners' Act authorizing indigent prisoner, who has been sentenced for violation of any "law of United States," and who has been imprisoned for failure to pay fine, and who has been confined for 30 days, to apply for discharge. *D. C. Clemmer, Director, Department of Corrections etc.* v. *N. H. Alexander* (1961, 295 F. 2d 176, 111 U.S. App. D.C. 210).

Municipal Court of District of Columbia is "court established by enactment of Congress" within Indigent Prisoners' Act authorizing indigent prisoner who has been imprisoned by "court established by enactment of Congress" for failure to pay fine, and who has been confined for 30 days, to apply for discharge. *Id.*

Chapter 34.—MISCELLANEOUS

Sec.
22–3401. Omitted.
22–3402. Repealed.
22–3403. Repealed.
22–3423. Use by private detective or collection agencies, of the words "District of Columbia", "District", the initials "D.C." to create impression that agency represents the District, is prohibited.
22–3424. Penalty for violation of section 22–3423.
22–3425. Prosecutions for violations of section 22–3423—Corporation counsel defined.

§ 22–3401. Omitted.

Sec. act Leg. Assembly, Aug. 23, 1871, p. 96, ch. 69, § 21, defined a "Gift enterprise". Since act Sept. 21, 1961, Pub. L. 87–267, § 1, repealed sections 22–3402 and 22–3403 which made it unlawful to engage in a "gift enterprise" business and imposed certain penalties for so doing, this section is now obsolete and is therefore omitted.

§§ 22–3402, 22–3403. Repealed. Sept. 21, 1961, 75 Stat. 565, Pub. L. 87–267, § 1.

Section R.S., D.C., § 1176, made it unlawful to engage in a gift enterprise as defined in section 22–3401.

Section R.S., D.C., § 1177, imposed penalties for engaging in any gift-enterprise business in the District.

§ 22–3407. Repealed. Aug. 13, 1962, 76 Stat. 360, Pub. L. 87–581, § 203.

Section act Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 892, fixed the hours of work for laborers and mechanics on public works.

The repealing act also provided that the provisions of the repealed statutes shall continue to apply with respect to contracts existing on the effective date of the repealing act or entered into pursuant to invitations for bids outstanding at the time of enactment of repealing act.

Effective date of act repealing this section is 60 days after its enactment. [Aug. 13, 1962.]

CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see title 40, §§ 327 to 332, and title 5, § 673c, of the U.S. Code.

§ 22–3408. Repealed. Aug. 13, 1962, 76 Stat. 360, Pub. L. 87–581, § 203.

Section of act Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 893, prescribed the penalties for violation of section 22–3407.

Effective date of act repealing this section is 60 days after its enactment. [Aug. 13, 1962.]

§ 22–3423. Use, by private detective or collection agencies, of the words "District of Columbia", "District," the initials "D.C." to create impression that agency represents the District, is prohibited.

No person engaged in the business of collecting or aiding in the collection of private debts or obligations, or engaged in furnishing private police, investigation, or other private detective services, shall use as part of the name of such business, or employ in any communication, correspondence, notice, advertisement, circular, or other writing or publication, the words "District of Columbia", "District", the initials "D.C.", or any emblem or insignia utilizing any of the said terms as part of its design, in such manner as reasonably to convey the impression or belief that such business is a department, agency, bureau, or instrumentality of the municipal government of the District of Columbia or in any manner represents the District of Columbia. As used in this section and section 22–3424, the word "person" means and includes individuals, associations, partnerships, and corporations. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87–837, § 1.)

§ 22–3424. Penalty for violation of section 22–3423.

Any person who violates section 24–3423 shall be punished by a fine of not more than $300 or by imprisonment for not more than ninety days, or by both such fine and imprisonment. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87–837, § 2.)

§ 22–3425. Prosecutions for violations of section 22–3423—Corporation Counsel defined.

All prosecutions for violations of section 22–3423 shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in this section the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Board of Commissioners of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this section. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87–837, § 3.)

Chapter 35.—SEXUAL PSYCHOPATHS

§ 22–3501. Indecent acts—Children.

NOTES TO DECISIONS

Instructions 11
Review 13

11. Instructions

Giving instruction, in prosecution for taking indecent liberties with child, stating that an element was that defendant "took or attempted to take" indecent liberties was not reversible error, even if instruction referred to separate offenses, where no objection was made, penalty for each offense was the same, defendant's sentence was well within statutory prescription, and evidence of guilt was overwhelming. *R. C. King* v. *United States* (1964, 329 F. 2d 257, 117 U.S. App. D.C. 302).

13. Review

Shortcomings that attended conduct of a preliminary hearing did not, under the circumstances, infect case with error which invalidated judgment of conviction based on valid indictment returned against defendant, nor was the judgment of conviction invalidated by police misbehavior in view of fact conviction was reached entirely apart therefrom. *W. L. Gilliam* v. *United States* (1963, 323 F. 2d 615, 116 U.S. App. D.C. 313).

§ 22–3502. Sodomy.

NOTES TO DECISIONS

REVIEW

Record on appeal from sodomy conviction, challenged on grounds of sufficiency of evidence presented by government, revealed no error affecting substantial rights of accused. *W. Hehl* v. *United States* (1960, 288 F. 2d 131, 109 U.S. App. D.C. 346).

§ 22–3503. Definitions.

NOTES TO DECISIONS

1.50. Construction

"Injury" within statute defining sexual psychopath as person who has evidenced such lack of power to control sexual impulses as to be dangerous to persons because he is likely to attack or otherwise inflict injury, loss, pain or other evil, includes injury to feelings and "pain" includes mental suffering. *C. W. Carras* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d. 393).

§ 22–3508. Hearing—Commitment to Saint Elizabeths Hospital.

NOTES TO DECISIONS

Bail 1.50
Confinement 2
Evidence—Sufficiency 3.50

1.50. Bail

Trial court has power to permit one adjudged sexual psychopath to remain at liberty on bond pending appeal. *C. W. Carras* v. *District of Columbia* (D.C. Mun. App. 1962, 183, A. 2d 393).

Question of right of defendant adjudged to be sexual psychopath to bail pending appeal was moot, where case was in reviewing court and ready for disposition adverse to defendant on merits so that no practical relief could be given as to bail.

2. Confinement

Notwithstanding psychiatrists' report and testimony of one psychiatrist to effect that defendant, arrested for indecent exposure, would not physically attack any one in any manner, in view of fact defendant had twice before been committed for similar offenses, defendant was properly committed as sexual psychopath. *C. W. Carras* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

3.50. Evidence—Sufficiency

Evidence sustained finding that defendant arrested for indecent exposure was sexual psychopath. *C. W. Carras* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 393).

Chapter 37.—WAREHOUSE RECEIPTS

[Transferred from title 28, chapter 21.]

Sec.

22—3701. Issue of receipts for goods not received.
22—3702. Issue of receipt containing false statement.
22—3703. Issue of duplicate receipts not so marked.
22—3704. Issue for warehouse man's goods of receipt which do not state that fact.
22—3705. Delivery of goods without obtaining negotiable receipts.
22—3706. Negotiation of receipt for mortgaged goods.

§ 22–3701. Issue of receipt for goods not received.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 50.)

§ 22–3702. Issue of receipt containing false statement.

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 51.)

§ 22–3703. Issue of duplicate receipts not so marked.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 28–1907, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 52.)

§ 22–3704. Issue for warehouseman's goods of receipts which do not state that fact.

Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 53.)

§ 22–3705. Delivery of goods without obtaining negotiable receipts.

A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 28–1907 and 28–1930, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 54.)

22–3706. Negotiation of receipt for mortgaged goods.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 55.)

TITLE 23.—CRIMINAL PROCEDURE

Chapter 1.—GENERAL PROVISIONS

§ 23-101. Conduct of prosecutions—Party plaintiff.

NOTES TO DECISIONS

4. Prosecution by United States Attorney

United States Attorney for District of Columbia rather than corporation counsel for District was the attorney who should prosecute offense of destroying private property in violation of the District of Columbia Code, where the offense was punishable by fine not to exceed $100, or imprisonment not to exceed six months, or both. *District of Columbia* v. *Moody, Hill and Hamilton* (1962, 304 F. 2d 943, 113 U.S. App. D.C. 67).

§ 23-102. Conduct of prosecutions—Certification to Court of Appeals.

NOTES TO DECISIONS

1. Certification by judge

Where question as to proper prosecuting authority as between District of Columbia Corporation Counsel and United States Attorney is raised, the court must certify question to Court of Appeals for District of Columbia, and Municipal Court of Appeals was required to reverse action of Municipal Court in dismissing informations brought by Corporation Counsel after ruling that United States Attorney was proper prosecuting authority and the court would remand with instructions to reinstate informations and to certify questions to Court of Appeals. *District of Columbia* v. *Moody, Hill & Hamilton* (D.C. Mun. App. 1961, 175 A. 2d 782).

§ 23-103. Repealed. Dec. 23, 1963, 77 Stat. 623, Pub. L. 8-241, § 21, effective Jan. 1, 1964.

Section, act Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934, as amended, dealt with prosecutions in the United States District Court and the Municipal Court [now the Court of General Sessions]. See sections 11-521 and 11-963.

§ 23-105. Appeals by United States and District of Columbia.

NOTES TO DECISIONS

4. Double jeopardy

Dismissal of embezzlement prosecution for "want of prosecution" was not equivalent to a finding that defendant had been denied his constitutional right to speedy trial. *J. P. Mann* v. *United States* (1962, 304 F. 2d 394, 113 U.S. App. D.C. 27).

§ 23-106. Bail—Deposit—Forfeiture.

NOTES TO DECISIONS

2. Excessive bail

Requiring defendant, convicted of traffic violation for which $5 fine was imposed, to post $200 bail bond pending appeal, was improper. *H. W. Starr* v. *District of Columbia* (D.C. Man. App. 1962, 176 A. 2d 878).

Amount of bail must bear some reasonable relation to purpose for which it is given. *Id.*

§ 23-107. Peremptory challenges.

NOTES TO DECISIONS

4. Joint defendants

Defendant was not entitled to three peremptory challenges in selecting jury, in addition to those allowed codefendant; the defendants were properly treated as one defendant in allowance and exercise of challenges. *S. Yankowitz* v. *United States* (D.C. Mun. App. 1962, 182 A. 2d 889).

Chapter 3.—SEARCH WARRANTS AND ARREST

§ 23-301. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.

NOTES TO DECISIONS

Probable cause 8
Search—Validity 10

8. Probable cause

Personal observations of suspicious conduct of defendant, charged with violations of gambling laws, during careful investigation, together with information received, gave probable cause for issuance of search warrant and warrant for arrest. *J. Minowitz* v. *United States* (1962, 298 F. 2d 682, 112 U.S. App. D.C. 21).

Allegations in affidavits upon basis of which a search warrant was issued, to the effect, among other things, that certain drugs were delivered to a certain person in a certain apartment, were sufficient to create probable cause and justify issuance of search warrant for items described. *G. C. Hunt* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

10. Search—Validity

Defendant, allegedly a known felon, was under unlawful arrest when he answered officers' call to come out of restaurant although he had been committing no offense, not even loitering, and evidence then produced on demand that he reveal content of pocket was unlawfully seized. *C. H. Kelley* v. *United States* (1961, 298 F. 2d 310, 111 U.S. App. D.C. 396).

Items not described in a search warrant but discovered in course of search made pursuant to such warrant were admissible in evidence. *G. C. Hunt* v. *United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

When a lawful search is executed pursuant to a lawful search warrant, contraband may be seized although not specifically described in the warrant. *Id.*

Premises under control of a person arrested may be searched contemporaneously as an incident to the arrest, and material seized as a result of such search may be introduced in evidence, even though not described in a search warrant. *Id.*

Where two plain-clothes men and complaining witness went to defendant's home with intention of making a search, if possible, for stolen goods and not to talk with him about reports of his possible involvement in three robberies, seizure of stolen property found in apartment was not incident to lawful arrest and was unlawful and could not be justified by exceptional circumstances and fruits of search were inadmissible in criminal prosecution. *United States* v. *E. E. Evans* (1961, 194 F. Supp. 90).

Defendant's invitation to "come on in" made to two plain-clothes men and complaining witnesses did not constitute a consent to search of apartment, and defendant did not waive any right to complain that search violated the Fourth Amendment. *Id.*

§ 23-302. Disposition of property seized.

NOTES TO DECISIONS

1. Admissibility of evidence

Failure to strictly adhere to ordinance in ministerial matters in delivering property to county police officers who returned it to rightful owner rather than delivering it to marshal in accordance with District of Columbia code requirements did not render testimony concerning such inadmissible. *A. A. Brooks, Jr.* v. *State of Maryland* (Maryland Ct. of App. 1964, 200 A. 2d 177).

Chapter 6.—PROFESSIONAL BONDSMEN

§ 23-608. Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act—Detailed records to be kept—Penalties and disqualifications.

NOTES TO DECISIONS

2.50. Moral turpitude

"Moral turpitude", within statute precluding licensing as a bondsman a person convicted of any offense involving moral turpitude, includes crimes in which fraud was an ingredient. *In the Matter of Nathaniel Madden* (D.C. Mun. App. 1962, 184 A. 2d 204).

Conviction of an offense involving moral turpitude precludes qualification for licensing of a bondsman, and courts have no latitude or discretion in the matter. *Id.*

Conviction for fraudulent filing of Federal income tax returns was conviction of an offense involving "moral turpitude," within statute precluding licensing as a bondsman a person convicted of an offense involving moral turpitude. *Id.*

Chapter 8.—OUT-OF-STATE WITNESSES

§ 23-802. Hearing on recall of out-of-State witnesses by State courts—Determination—Travel allowance—Penalty.

NOTES TO DECISIONS

1. Hearing mandatory

Under Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings, it is mandatory that a hearing be had and a determination made as to whether witness is material and necessary, and that it will not cause undue hardship to witness to be compelled to attend and testify, and the certificate is prima facie evidence of all facts stated therein. *United States ex. rel. State of Pennsylvania* v. *J. M. McDevitt* (D.C. App. 1963, 195 A. 2d 741).

In proceeding to issue process to require a person to return as a witness to testify before investigating grand jury in Pennsylvania, evidence supported findings that it was not established that person was material and necessary witness or that compelling his attendance would not cause him undue hardship, and hence denial of application was not an abuse of discretion. *Id.*

§ 23-804. Exemption from arrest.

NOTES TO DECISIONS

1. Immunity from process

Letter directing defendant to appear at federal office, on account of criminal complaint, lest warrant be issued for arrest, was not a "summons within the meaning of the Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings," and defendant who appeared accordingly was not exempt from process under District of Columbia statute exempting persons appearing in obedience to summons. *R. C. Buffkin* v. *Alum-Co. National, Inc., et al.* (1963, 331 F. 2d 96, —— U.S. App. D.C. ——).

TITLE 24.—PRISONERS AND THEIR TREATMENT

Chapter 1.—PROBATION

§ 24–101. Probation system—Probation officers—Appointment.

NOTES TO DECISIONS

1.50. Sentencing procedure

In sentencing, the judge must consider a program of rehabilitation designed to preclude, so far as current learning can furnish a guide, a repetition of the crime, and to such end Congress has placed several aids at disposal of judge, including provisions for presentence investigation, for commitment prior to sentence to a hospital for examination to determine mental competence of the offender, and for appointment of psychiatrist and psychologist. *Wm. H. Leach* v. *United States* (1963, 320 F. 2d 670, 115 U.S. App. D.C. 351).

§ 24–102. Repealed. Dec. 23, 1963, 77 Stat. 626, Pub. L. 88–241, § 21, effective Jan. 1, 1964.

Section of act June 25, 1910, 36 Stat. 864, ch. 433, § 2, dealt with the authority of the United States District Court for the District of Columbia and the former Municipal Court to place certain convicted offenders on probation. The section insofar as it related to the United States District Court was repealed by act June 25, 1958, 72 Stat. 216, Pub. L. 85–463, § 2. The surviving provisions of the section are now reenacted as section 16–710.

§ 24–106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

NOTES TO DECISIONS

1. Presentence examination

A prisoner who requested a mental examination before sentence could have been examined under statute providing a qualified psychiatrist and a qualified psychologist for district judges to assist them in carrying out their duties. *W. R. Leach* v. *United States* (1964, 334 F. 2d 945, —— U.S. App. D.C. ——).

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

§ 24–203. Imposition of indeterminate sentences authorized—Life and death sentences.

NOTES TO DECISIONS

8. Sentences

Prospect of having conviction "automatically" set aside under Youth Corrections Act was a difference so important as to outweigh possibility of longer confinement and to warrant conclusion that second sentence, of thirty-four months to one hundred and two months, under Indeterminate Sentence Law, was more severe than first sentence, of three to nine years, under Youth Corrections Act, for robbery; and, accordingly, second sencence, entered on motion to correct, was invalid where offender had already begun to serve first sentence. *E. J. Tatum* v. *United States* (1962, 310 F. 2d 854, 114 U.S. App. D.C. 49).

§ 24–204. Parole authorized—Conditions—Custody.

NOTES TO DECISIONS

2. Discretion of board

Material facts in prisoner's suit against parole board claiming that racial discrimination was basis of denial of parole must be such as would legitimately tend to show that parole board acted under color of law, and thereby subjected prisoner to deprivation of his federal rights. *R. Richardson, Jr.* v. *H. F. Rivers, D.C. Board of Parole et al.* (1964, 335 F. 2d 996, —— U.S. App. D.C. ——).

Prisoner's conclusory assertions that racial discrimination was basis of parole board's denial of parole as against board's affidavits in denying discrimination did not create a genuine issue as to a material fact when viewed in light of board's broad discretionary power. *Id.*

§ 24–205. Violation of parole—Warrant—Arrest—Return to confinement.

NOTES TO DECISIONS

3. Jurisdiction

The District of Columbia Parole Board did not err in acting pursuant to D.C. Parole Act with regard to prisoner who had been convicted of a federal crime rather than offense made criminal by D.C. Code, since the act establishing D.C. Parole Board transferred authority over prisoners held in District prisons to D.C. Board, and provisions of D.C. Parole Act, rather than federal parole law, were to be applied to such prisoners. *R. A. Howerton* v. *Hugh F. Rivers et al.* (1963, 326 F. 2d 653, 117 U.S. App. D.C. 110).

§ 24–206. Revocation of parole after retaking—Hearing—New parole.

NOTES TO DECISIONS

Appearance and hearing 1
Good time allowance 6.50
Right to counsel 10
Sentence upon reimprisonment 12

1. Appearance and hearing

Alleged parole violator was entitled to present testimony of witnesses appearing voluntarily. *G. J. Reed, Chairman, U.S. Board of Parole et al.* v. *L. D. Butterworth* (1961, 297 F. 2d 776, 111 U.S. App. D.C. 365).

6.50. Good time allowance

Where prisoner, who was sentenced for violation of District of Columbia Code and transferred to federal penitentiary at Leavenworth, was later conditionally released and placed under supervision of United States Board of Parole at Washington, D.C., but was later taken into custody on a warrant issued by United States Board of Parole for violation of conditions of his release and transferred to a penal institution operated by District of Columbia, prisoner after recommitment accumulated good time at rate of six days per month as fixed by District of Columbia Code and not at rate of eight days per month as was the case when he was confined in federal penitentiary. *G. P. Clokey* v. *U.S. Parole Board et al.* (1962, 310 F. 2d 86, U.S. App. 4th Ct.).

10. Right to counsel

Alleged parole violator was entitled to counsel at hearing. *G. J. Reed, Chairman, U.S. Board of Parole et al.* v. *L. D. Butterworth* (1961, 297 F. 2d 776, 111 U.S. App. D.C. 365).

12. Sentence upon reimprisonment

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. *R. A. Howerton* v. *Hugh F. Rivers et al.* (1963, 326 F. 2d 653, 117 U.S. App. D.C. 110).

Prisoner was not entitled, on return to prison following revocation of parole, to credit against remaining sentence for time spent on parole. *E. Bates* v. *H. F. Rivers, Executive etc.* (1963, 323 F. 2d 311, 116 U.S. App. D.C. 306).

Chapter 3.—INSANE CRIMINALS

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

NOTES TO DECISIONS

Acceptance of guilty plea .50
Burden of proof 1.50
Burden of proof after commitment 2
Certification of sanity 3
Commitment procedure 4
Competency to stand trial 5
Constitutionality 7
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Defense of insanity 8.50
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Potentially dangerous 20
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Presentence examination 20.51
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Psychiatrist's report 23.50
Public policy 24
Purpose 25
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.50. Acceptance of guilty plea

Where psychiatrist's report on defendant's competency to stand trial on bad check charge had included statement that defendant's crimes were product of specified mental disease particularly affecting financial judgment and that defendant required further treatment to insure against repetition of the offenses, court properly refused to accept plea of guilty and proceeded to trial to determine that defendant was not guilty by reason of insanity, though defendant had been judicially declared competent to stand trial and to assist in his own defense. *W. Overholser, Sup't etc.* v. *F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; rev'd 1962, 82 S. Ct. 1063).

1.50. Burden of proof

Burden rests with party seeking commitment of accused to mental institution to prove that accused is then of unsound mind. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 307 U.S. 618, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

2. Burden of proof after commitment

Person who sought release from hospital to which he had been committed after having been found not guilty of housebreaking and larceny on ground of insanity had burden of proving by a preponderance of evidence that he had recovered his sanity, and would not in reasonably foreseeable future be dangerous to himself or others by reason of mental disease or defect, and that failure of superintendent of hospital to certify him for release was arbitrary or capricious. *S. V. Robertson* v. *D. C. Cameron* (1963, 224 F. Supp. 60).

Once a man has been committed to a hospital after verdict of not guilty by reason in insanity, government need not thereafter be forced to prove his insanity as price of continuing treatment. *W. Overholser, Sup't etc.* v. *F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; rev'd 1962, 82 S. Ct. 1063).

3. Certification of sanity

To be "arbitrary" or "capricious", refusal of superintendent of hospital to certify that person committed to hospital after being found not guilty of criminal charge on ground of insanity has recovered his sanity and is entitled to unconditional release must be without a reasonable or rational basis, but it need not be made in bad faith. *S. V. Robertson* v. *D. C. Cameron* (1963, 224 F. Supp. 60).

Superintendent of hospital to which person is committed after having been found not guilty of a crime on ground of insanity may not act according to his personal notion or whim, no matter how well intentioned or bona fide his action may be, in determining whether person committed has recovered his sanity and is entitled to an unconditional release. *Id.*

Refusal of superintendent of hospital to which person had been committed after being found not guilty of crime on ground of insanity to make certificate as basis for committed person's release was arbitrary and capricious, in view of showing of grounds for release. *Id.*

Mental hospital superintendent's return in habeas corpus proceeding by inmate, asserting generally that inmate had not recovered from "abnormal mental condition" and required further treatment, without explaining quoted phrase or describing past or future treatment, was insufficient on its face. *H. T. O'Beirne* v. *W. Overholser* (1961, 193 F. Supp. 652; rev'd 302 F. 2d 852).

One who had been found not guilty by reason of insanity and committed to mental hospital could not be detained in hospital beyond period of maximum sentence possible for the offense charged, because of "sociopathic personality" which was not sufficient basis for a civil adjudication of mental incompetency, even if such condition tended to make him an habitual petty criminal. *Id.*

Fact that a person is an habitual petty criminal could not subject him to permanent incarceration in criminal ward of mental institution, and such disposition may not be used as a substitute for laws dealing expressly with habitual criminals. *Id.*

4. Commitment procedure

Supreme Court granted certiorari, where important questions were raised as to procedure for confining criminally insane in District of Columbia and as to possible constitutional infirmities in statute under which commitment was made as applied to circumstances in case. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

5. Competency to stand trial

Competency to stand trial depends on whether defendant understands nature of proceedings against him and is properly able to assist in his own defense. *United States* v. *H. L. Womack* (1962, 211 F. Supp. 578).

7. Constitutionality

District of Columbia statute requiring mandatory confinement of persons found not guilty by reason of insanity is constitutional. *J. L. Foller* v. *W. Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

7.50. Construction

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be ordered by court to be confined in hospital for mentally ill forecloses trial judge from exercising any discretion and does not require finding by trial judge, jury, or medical board as to accused's mental health on date of judgment of acquittal. *F. C. Lynch* v. *W. Overholser, Sup't, etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Statute to effect that person acquitted solely on ground that he was insane at time of commission of offense shall be confined in hospital for mentally ill is applicable only to defendant who affirmatively relies upon defense of insanity in any way and such defense need not be asserted by formal plea, but statute does not apply to one who has maintained that he was mentally responsible when alleged offense was committed. *Id.*

Accused, who did not claim that he had been insane when offenses were committed and who presented no evidence to support an acquittal by reason of insanity, was not properly confined in hospital for mentally ill upon finding of trial judge that he was not guilty on ground that he was insane at time of commission of offenses. *Id.*

Statutory construction confining itself to bare words of statute is dangerous in that literalness may strangle meaning. *Id.*

Statute should be interpreted, if fairly possible, in such way as to free it from not insubstantial constitutional doubts. *Id.*

8.50. Defense of insanity

On adequate averment, defendant has right to assistance of court in developing basis for his insanity defense,

and such assistance may take form of commitment for mental examination, examination through Mental Health Commission or Legal Psychiatric Service, or appointment of private experts. *A. J. Brown* v. *United States* (1964, 331 F. 2d 822, —— U.S. App. D.C. ——).

Where indigent defendant in attempting to utilize defense of insanity based on drug addiction was denied even minimal assistance of free subpoena through averments in his motions were not inherently incredible on their face and there was no evidence that averments were untrue or that request was otherwise frivolous, defendent was entitled to new trial after fair opportunity to prepare defense of insanity. *Id.*

Defendant has burden of proving his defense of insanity. *United States* v. *J. A. Naples* (1961, 192 F. Supp. 23; rev'g 307 F. 2d 618).

10. Discretion of court

Record failed to establish that district court abused its discretion in denying application for conditional release, under statute governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based on certificate of superintendent of hospital in which applicant was confined. *M. W. Durnham* v. *United States* (1962, 308 F. 2d 332, 113 U.S. App. D.C. 377).

Under statute requiring appropriate certificate of superintendent of mental hospital as a condition precedent to release of person committed, court may not substitute its own judgment for that of superintendent and may not try the matter de novo in habeas corpus proceeding, but superintendent's action or failure to act may not be deemed final or conclusive for all purposes. *H. T. O'Bierne* v. *W. Overholser* (1961, 193 F. Supp. 652; rev'd 302 F. 2d 852).

Court may step in to determine whether action or failure to act on part of superintendent of mental hospital is arbitrary and capricious. *Id.*

10.50. Due process

To require defendant to assume burden of proof on issue of insanity does not violate due process. *United States* v. *J. A. Naples* (1961, 192 F. Supp, 23; rev'd 288 F. 2d 618).

11. Evidence

Evidence in habeas corpus proceeding by person committed to hospital for mentally ill after being found not guilty of crime on ground of insanity established that person committed had recovered his sanity and was not likely in reasonably foreseeable future to be dangerous to himself or others by reason of any mental disease or defect. *S. V. Robertson* v. *D. C. Cameron* (1963, 224 F. Supp. 60).

12.50. Findings

Absence of findings relating reason for denial of habeas corpus petitioned for by one committed to mental hospital to mental hospital following acquittal by reason of insanity required reviewing court to retain jurisdiction and remand to give District Court opportunity to amplify record to set forth such reasons. *J. A. Whittaker* v. *W. Overholser Sup't etc.* (1962, 299 F. 2d 447, 112 U.S. App. D.C. 66).

12.51. Grounds for commitment

Only those who need treatment and may be dangerous may be confined to hospital for mentally ill. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

13. Habeas corpus

Conclusion that petitioner who had been committed to hospital under statute following directed verdict of not guilty by reason of insanity failed to sustain burden of showing entitlement to unconditional release from hospital the superintendent of which had stated both at time of trial and on habeas corpus that he was without mental disorder was not without evidentiary support, in view of conflicting psychiatric testimony. *F. A. Miller* v. *D. C. Cameron, Sup't etc.* (1964, 335 F. 2d 986, —— U.S. App. D.C. ——).

Affirmance of judgment denying writ of habeas corpus to one who had been committed to hospital pursuant to statute following verdict of not guilty by reason of insanity was without prejudice to filing of new petition for writ. *Id.*

Evidence disclosed that petitioner seeking habeas corpus was receiving psychiatric treatment during his confinement in hospital following acquittal by reason of insanity. *J. L. Foller* v. *Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

Evidence disclosed that director of hospital, to which petitioner had been committed following his acquittal by reason of insanity, was not arbitrary in refusing discharge. *Id.*

13.50. Hearing

If District Court were to find that habeas corpus petition filed by one committed to mental hospital following acquittal by reason of insanity, which, together with return, presented factual issue, was not procedurally premature, court was to grant hearing on question of eligibility for release under statute. *J. A. Whittaker* v. *Overholser, Sup't etc.* (1962, 299 F. 2d 447, 112 U.S. App. D.C. 66).

Habeas corpus petition filed by one who was confined to hospital following acquittal by reason of insanity, alleging that he was free from named mental conditions, of sound mind and not dangerous to himself or society, together with return, presented question of fact requiring resolution, assuming it was not raised in untimely fashion. *Id.*

13.51. Independent examination

Inmate who had been confined for more than one year without an independent examination as to his mental health by an expert appointed by the district court was entitled, in connection with his petition for release, as a matter of right, to such independent examination to test findings and conclusions of the hospital staff where he was confined. *J. Watson* v. *D. C. Cameron, Sup't, etc.* (1962, 312 F. 2d 878, 114 U.S. App. D.C. 151).

13.52. Indeterminate commitment

That accused has pleaded guilty or that government has established that he committed criminal act constitutes only strong evidence that his continued liberty would imperil preservation of public peace and does not justify indeterminate commitment to mental institution on bare reasonable doubt as to past sanity. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

13.53. Inquiry after acquittal

Under statute giving court authority to conduct hearing whenever a person is arrested, indicted, or charged by information and to commit person to mental hospital, trial court had jurisdiction to conduct hearing to determine competency of defendant after his acquittal on grounds of insanity, despite his refusal to raise issue in criminal trial. *United States* v. *C. L. Limber* (D.C. App. 1963, 192 A. 2d 530).

After jury returns verdict of not guilty by reason of insanity, inquiry as to whether accused is presently commitable as person of unsound mind may be undertaken. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

Defendant does not have absolute right to have his guilty plea accepted and trial judge may enter plea of not guilty in behalf of accused, but, if that is done, and defendant, despite his own assertions of sanity, is found not guilty by reason of insanity, commitment to hospital for mentally ill must be either under statute providing procedure for confining accused who, though found competent to stand trial, is nevertheless commitable as person of unsound mind, or civil commitment provisions. *Id.*

16. Judicial determination

Manslaughter sentences were not void because of absence of judicial adjudication that defendant was competent to stand trial, though he had previously been found to be insane, where certificate of superintendent of hospital stating that defendant had recovered his reason and was then of sound mind was filed in court before defendant pleaded guilty, and court ordered examination by two independent psychiatrists who reported that defendant was of sound mind at the time. *J. W. Hunter* v. *United States* (1963, 323 F. 2d 625, 116 U.S. App. D.C. 323).

If accused denies that he is mentally ill, he is entitled to judicial determination of his mental state despite hospital board's certification that he is of unsound mind. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

16.50. Jurisdiction to commit

Municipal court did not have jurisdiction under D.C. Code 1961 § 24–301(a) to commit person to mental hospital where court had found accused not guilty by reason of insanity but had finally disposed of the criminal charges against accused more than a year before such commitment and had erroneously committed accused under D.C. Code 1961 § 24–301(d). *Dr. D. C. Cameron* v. *W. V. Fisher* (1963, 320 F. 2d 731, 116 U.S. App. D.C. 9).

20. Potentially dangerous

Mere fact that person committed under statute to mental institution following acquittal of criminal charge by reason of insanity has some dangerous propensity does not, standing alone, warrant his continued confinement but dangerous propensities must be related to or arise out of abnormal mental condition, whether such condition was that which constituted basis for acquittal. *W. Overholser* v. *H. T. O'Bierne* (1962, 302 F. 2d 852, 112 U.S. App. D.C. 267).

That one confined to mental institution because of his acquittal of criminal charges for insanity would no longer be committable under civil procedure could constitute no ground for his release where there was no showing that he had recovered to point where he was free from abnormal mental condition or that his release would not expose himself or public to danger in reasonably foreseeable future. *Id.*

Under rule that to be eligible for release from mental hospital, inmate must be free from such "abnormal mental conditions" as would make him dangerous to himself or community in reasonably foreseeable future, quoted words refer to a mental disease or mental defect, and not just any condition that is outside of the ordinary norm. *H. T. O'Bierne* v. *W. Overholser* (1961, 193 F. Supp. 652; rev'd 302 F. 2d 852).

20.50. Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart* v. *United States* (1961, 366 U.S. 1, 81 S. Ct. 941; rev'd 275 F. 2d 617).

20.51. Presentence examination

A diagnosis of a state prison, as part of a pre-sentence report, that defendant was a psychopathic personality, unstable, recidivistic and antisocial might have been a sufficient prima facie case for ordering a mental examination of the defendant before sentence, but even if it was not, there was enough basis to make clear the usefulness of a psychological evaluation in determining sentence. *W. R. Leach* v. *United States* (1964, 334 F. 2d 945, —— U.S. App. D.C. ——).

Psychiatric evaluation of a prisoner through the Legal Psychiatric Services or through the Prison Bureau program, like a pre-sentence report, is a useful tool for rehabilitative rather than retributive sentencing, and it has a crucial place in the sentencing process. *Id.*

22. Pretrial mental examination

Although a trial judge has some discretion in denying a motion for a mental examination as not timely, if counsel learns of defendant's alleged symptoms on day the trial is scheduled to begin, a motion submitted at that time cannot be denied as late. *L. P. Mitchell* v. *United States* (1963, 316 F. 2d 354, 114 U.S. App. D.C. 353).

A written motion on morning of trial for a mental examination of defendant based on allegations that defendant had displayed to counsel certain letters which raised inquiry with respect to his mental situation, and based on allegation that counsel had learned that defendant was an epileptic and exhibited unexplained and repeated criminal activities was, under the circumstances, adequate and timely, and denial thereof was prejudicial error. *Id.*

On a motion for an order directing a mental examination, defendant is not required to produce, in order to get the examination, enough evidence to prove that he is incompetent or irresponsible. *Id.*

23.50. Psychiatrist's report

Psychiatrist's reports on whether defendant was mentally competent to stand trial properly included evaluation of defendant's mental condition at time crimes were committed. *W. Overholser, Sup't, etc.* v. *F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404; rev'd 1962, 82 S. Ct. 1063).

24. Public policy

That personal liberty should depend on such an arbitrary circumstance as mental hospital's change of "administrative policy" in determining whether sociopathic personality should be treated as a mental disease, as affecting release of committed person, would be contrary to basic principles of freedom. *H. T. O'Bierne* v. *W. Overholser* (1961, 193 F. Supp. 652; rev'd 302 F. 2d 852).

25. Purpose

Purpose of ordering a mental examination for a defendant is to get evidence on whether he is or is not competent to stand trial, and another purpose is to get evidence on whether, if there is a trial, the jury should be instructed on insanity and criminal responsibility. *L. P. Mitchell* v. *United States* (1963, 316 F. 2d 354, 114 U.S. App. D.C. 353).

27. Release

Person found not guilty of criminal offense on ground of insanity may not be released unless superintendent of hospital to which he has been committed certifies that person committed has recovered his sanity, and that, in superintendent's opinion, the person will not in reasonably forseeable future be dangerous to himself or others and is entitled to an unconditional release. *S. V. Robertson* v. *D. C. Cameron* (1963, 224 F. Supp. 60).

28.50. Restored competency

Determination of accused's eligibility to stand trial may be established by a finding of "restored competency" or a finding that he never was incompetent, and hence assuming that a proceeding to set aside original adjudication of incompetency is required, substance of such proceeding was provided by hearing in which hospital psychiatrist testified that accused was not a mental defective and that there was no indication of organic brain injury or mental illness. *V. E. Jenkins* v. *United States* (1962, 307 F. 2d 637, 113 U.S. App. D.C. 300).

30.50. Sentencing procedure

Although generally an appellate court will not review sentences that are within the statutory maximum, a sentencing judge should use some of the resources which the Congress has provided in regard to psychiatric evaluation of a prisoner, and should not arbitrarily ignore the data properly obtained thereby in fixing a sentence. *W. R. Leach* v. *United States* (1964, 334 F. 2d 945, —— U.S. App. D.C. ——).

§ 24–302. Commitment of persons becoming insane while serving sentence.

NOTES TO DECISIONS

Evidence 2
In general 1
Motion after sentence 3

1. In general

The fact that conviction is affirmed does not foreclose possibility of further inquiry whether sentence should be served in penitentiary or in mental hospital, since any prisoner found to be mentally ill may be transferred to such a hospital. *D. O. Williams* v. *United States* (1963, 312 F. 2d 862, 114 U.S. App. D.C. 135).

If accused who pleads guilty is found to be in need of psychiatric assistance, he may be transferred to hospital for mentally ill following sentence. *F. C. Lynch* v. *W. Overholser, Sup't etc.* (1962, 369 U.S. 705, 82 S. Ct. 1063, rev'g 288 F. 2d 388).

2. Evidence

Where several psychiatrists testified that defendant was a psychopath or sociopath on day of killings and some thought condition a mental disease, evidence was sufficient to raise issue of insanity and require government to disprove beyond a reasonable doubt the claim that crimes were product of mental disease or defect. *D. O. Williams* v. *United States* (1963, 312 F. 2d 862, 114 U.S. App. D.C. 135).

Exclusion of conclusory portions of report by psychologist that tests indicated that defendant was suffering from effects of organic damage to central nervous system, even if error, was harmless where report was cumulative, psychologists had been permitted to testify to results of tests, and some of the psychiatrists who testified based their findings on report. *Id.*

In murder prosecution, where only three of eleven psychiatrists could say that killings in question were product of defendant's mental disease or defect, evidence was insufficient to raise, as a matter of law, reasonable doubt as to defendant's sanity and conflict in medical testimony became issue for jury. *Id.*

3. Motion after sentence

Motion of defendant, made after his entry of plea of guilty to narcotics charge in open court and his sentence therefor, to set aside plea of guilty and to have himself committed to mental hospital to determine his mental competence to understand proceedings against him or to properly assist in his own defense, and affidavit of defendant's wife were insufficient to require court to allow withdrawal of plea of guilty. *D. Hopkins* v. *United States* (1963, 318 F. 2d 186, 115 U.S. App. D.C. 215).

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER III.—CORRECTIONAL INDUSTRIES FUND

Sec.

24–451 Establishment of fund.
24–452 Availability of fund for performance of services and production of commodities for rfiehabilitation of inmates—Accounting for the fund.
24–453 Sale of products and services to District, Federal and State governments—Receipts from sales to be deposited in fund—Use of funds.
24–454 Reports of financial condition and results of operations to be made by Director of the Department of Corrections to Commissioners—Disposition of realized profits—Net worth of fund not to be increased beyond $2,500,000—Payments to inmates and their dependents—Excess profits to be deposited to general funds of the district.
24–455 Transfer of asests from prior working capital fund.

SUBCHAPTER I.—PRISONS

§ 24–401. Partial repeal. Dec. 23, 1963, 77 Stat. 623, Pub. L. 88–241, § 21, effective Jan. 1, 1964.

Section of act Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934, dealt with places of imprisonment, effect of cumulative sentences on place of imprisonment and jurisdiction of prosecutions depending on whether punishment was for more or less than one year. The first three sentences are omitted as superseded by section 24–425 and balance of section are reenacted as part of section 11–963. See also section 11–521.

§ 24–402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

NOTES TO DECISIONS

4.50. Religious services

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. *Wm. T. X. Fulwood* v. *Clemmer, Director, etc. and Anderson, Acting Sup't etc.* (1962, 206 F. Supp. 370).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Id.*

§ 24–425. Place of imprisonment—Designation by Attorney General—Transfer.

NOTES TO DECISIONS

1. Transfer of prisoners

Habeas corpus proceeding by defendant, who alleged that he had been transferred from confinement in Virginia to jail in District of Columbia while petition for appeal in forma pauperis from denial of previous petition for habeas corpus was pending in Court of Appeals for Fourth Circuit in order to hamper such previous habeas corpus proceeding, did not present moot question, and defendant was entitled to hearing at least as to legality of his transfer in view of failure of District of Columbia to controvert defendant's allegations. *J. A. Bolden, Jr.* v. *D. C. Clemmer et al.* (1961, 298 F. 2d 306, 111 U.S. App. D.C. 392).

§ 24–442. Powers of Department over institutions—Rules and regulations.

NOTES TO DECISIONS

Discipline of prisoners 1
Review of administrators' actions 2

1. Discipline of prisoners

Allowing some religious groups to hold religious services at reformatory and jail at public expense while denying that right to another discriminated against prisoner of the other faith in violation of orders of Commissioners of District of Columbia requiring prison officials to make facilities available without regard to race or religion. *Wm. T. X. Fulwood* v. *Clemmer, Director etc. and Anderson Acting Sup't etc.* (1962, 206 F. Supp. 370).

Regulation and discipline of prisoners convicted of offenses against United States has been committed to prison authorities. *Id.*

2. Review of administrators' actions

Actions of prison authorities, including granting or withdrawal of claimed privileges of prisoners, are not reviewable by the court in "mandamus proceeding" in the absence of specific allegations particularly showing a clear breach of duty by prison administrators. *White and Childs* v. *D. L. Clemmer, Director, District of Columbia Department of Corrections et al.* (1961, 295 F. 2d 132, 111 U.S. App. D.C. 145).

Federal prisoners' pleadings seeking relief in nature of mandamus because of claimed deprivation of civil rights on account of their religion failed to allege with sufficient particularity a basis for redress by court where prison administration had been committed by statute to prison authorities and no breach of their statutory duty had been shown.

SUBCHAPTER III.—CORRECTIONAL INDUSTRIES FUND

§ 24–451. Establishment of fund.

There is hereby established in the Treasury a revolving fund for the government of the District of Columbia to be known as the correctional industries fund (hereinafter referred to as the "fund") to replace the working capital fund created by section 47–131. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88–622, § 1.)

COMMISSIONERS AUTHORITY—DELEGATION OF FUNCTIONS

Section 7 of act Oct. 3, 1964, provided: "Nothing in this Act shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Commissioners or in any office or agency under the jurisdiction and control of said

Commissioners may be performed by the Commissioners or may be delegated by said Commissioners in accordance with section 3 of such plan."

Effective Date

Section 8 of act Oct 3, 1964, provided: "This Act [Sections 24–451 to 24–455, repeal of section 47–131 and notes to section 24–451] shall take effect July 1, 1963."

§ 24–452. Availability of fund for performance of services and production of commodities for rehabilitation of inmates—Accounting for the fund.

The fund shall be available without fiscal-year limitation and shall be used for the performance of such services and the production of such commodities as, in the judgment of the Board of Commissioners of the District of Columbia (hereinafter referred to as "Commissioners"), will contribute to the rehabilitation, knowledge, and skill in trades and occupations of inmates of the institutions in the Department of Corrections of the District of Columbia, thereby equipping them with a means of livelihood upon release. The accounting for the fund shall be maintained on the accrual basis, including provision for employees' accrued annual leave and depreciation of fixed assets, and financial reports shall be prepared on the basis of such accounting. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88–622, § 2.)

Effective Date

See note to section 24–451.

§ 24–453. Sale of products and services to District, Federal and State governments—Receipts from sales to be deposited in fund—Use of funds.

Products and services produced by utilization of the fund may be purchased, at fair market prices as determined by the Commissioners, by any department or agency of the District of Columbia government, the Federal Government, any State or subdivision of a State or any Commonwealth, territory, or possession of the United States. Receipts from the sales of products and services shall be deposited to the credit of the fund. The fund shall be used for all necessary expenses directly related to the fund, including personal services; payments to inmates, or payments to their dependents, of such pecuniary earnings as the Commissioners deem proper; purchase, repair, and maintenance of equipment; purchase of raw materials and supplies; payment of dues and expenses of attendance at meetings and conventions, as approved by the Commissioners; maintenance and repair of buildings used for fund purposes; alteration of existing facilities used for fund purposes where the total project cost does not exceed $10,000; and, within the limits of amounts provided in annual appropriation Acts, acquisition and improvement of real property. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88–622, § 3.)

Effective Date

See note to section 24–451.

§ 24–454. Reports of financial condition and results of operations to be made by Director of the Department of Corrections to Commissioners—Disposition of realized profits—Net work of fund not to be increased beyond $2,500,000—Payments to inmates and their dependents—Excess profits to be deposited to general funds of the district.

Not later than six months' after the end of each fiscal year, the Director of the Department of Corrections of the District of Columbia shall submit to the Commissioners a report of the financial condition of the fund and the results of operations for such fiscal year. The Commissioners shall review such report and determine the disposition to be made of realized profits. The Commissioners are empowered to authorize retention of accumulated profits for the purpose of acquiring or improving personal property, or to increase working capital to planned operating levels. In no case, however, shall such profits retained for these purposes increase the net worth of the fund beyond $2,500,000. The Commissioners are also empowered to authorize retention of accumulated profits for payments to inmates other than those employed in industrial operations, or for payments to their dependents, of such amounts as the Commissioners deem proper. Accumulated profits not retained or used for the aforementioned purposes, or which exceed the limitation imposed, shall be deposited to the credit of the general revenues of the District of Columbia. (Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88–622, § 4.)

Effective Date

See note to section 24–451.

§ 24–455. Transfer of assets from prior working capital fund.

All assets except buildings and all liabilities or other obligations which at the time of enactment of this Act are components of the working capital fund, Workhouse and Reformatory, as created by Public Law 493, Seventy-ninth Congress, approved July 9, 1946 (60 Stat. 514, ch. 544, sec. 1), [section 47–131] shall be transferred to the fund created by section 24–451. (Oct. 3, 1964, 78 Stat. 1001, Pub. L. 88–622, § 5.)

Reference in Text

"This Act" referred to in this section consists of section 24–451 to 24–455, the repeal of section 47–131 and the notes to section 24–451.

Effective Date

See note to section 24–451.

PART V

GENERAL STATUTES

TITLE 25—ALCOHOLIC BEVERAGES.
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.
TITLE 27—CEMETERIES AND CREMATORIES.
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS
TITLE 29—CORPORATIONS.
TITLE 30—DOMESTIC RELATIONS.
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.
TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS.
TITLE 33—FOOD AND DRUGS.
TITLE 34—HOTELS AND LODGING-HOUSES.
TITLE 35—INSURANCE.
TITLE 36—LABOR.
TITLE 37—LIBRARIES.
TITLE 38—LIENS.
TITLE 39—MILITARY.
TITLE 40—MOTOR VEHICLES.
TITLE 41—PARTNERSHIPS.
TITLE 42—PERSONAL PROPERTY.
TITLE 43—PUBLIC UTILITIES.
TITLE 44—RAILROADS AND OTHER CARRIERS.
TITLE 45—REAL PROPERTY.
TITLE 46—SOCIAL SECURITY.
TITLE 47—TAXATION AND FISCAL AFFAIRS.
TITLE 48—TRADE-MARKS AND TRADE NAMES.
TITLE 49—COMPILATION AND CONSTRUCTION OF CODE.

TITLE 25.—ALCOHOLIC BEVERAGES

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

§ 25–103. Definitions.

NOTES TO DECISIONS

5. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulations of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co.* v. *District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

§ 25–107. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Commissioners are further authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under paragraph (1) of section 25–111, with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises.

The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than light wines and beer, and any such sale is hereby prohibited. Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited.

The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed

for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice of advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7; June 29, 1953, 67 Stat. 102, ch. 159, § 404(a); Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 3.)

AMENDMENTS

1961—Section 3, act Oct. 4, 1961, amended the second paragraph by inserting at the end of the first sentence the following new sentence: "Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited."

1953—Act June 29, 1953, amended section by adding after the word "morals" in the first paragraph the provision authorizing the Commissioners to prescribe rules and regulations necessary to control consumption of alcoholic beverages on licensed premises.

CROSS REFERENCES

District of Columbia Revenue Act of 1956, authority of Commissioners to make rules and regulations under, see § 47–1595a.

Other provisions for rules and regulations under this chapter, see §§ 25–106, 25–112, 25–115, 25–138.

Penalties for violations of chapter or rules and regulations, see §§ 25–118, 25–132.

Rules and reglulations generally, see § 1–226.

NOTES TO DECISIONS

Double jeopardy 1
Regulations, validity of 2

1. Double jeopardy

Convictions for violations of this act and the Liquor Taxing Act of 1934, did not place defendant in double jeopardy, the evidence required in the two cases being different. *Sims* v. *Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

2. Regulations, validity of

Section of the Distict of Columbia Code giving Commissioners authority to make regulations for issuance of liquor licenses and to forbid issuance of liquor licenses for businesses established subsequent to January 24, 1934, near or around schools, precluded promulgation of regulations forbidding liquor licenses to businesses established prior to January 24, 1934, because they are near schools, and prohibitory regulation was inapplicable to a restaurant business established in 1928. *H. S. Hensel et al.* v. *Alcoholic Beverage Control Board et al.* (1963, 321 F. 2d 754, 116 U.S. App. D.C. 141).

Regulation of Alcoholic Beverage Control Board prescribing the terms upon which credit may be extended to liquor retailer by wholesalers and manufacturers was valid. *Press Liquors, Inc.* v. *F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co.* v. *District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

§ 25–109. Sale without license prohibited—Exceptions.

NOTES TO DECISIONS

5.50. Evidence—sufficiency

Evidence sustained conviction for unlicensed keeping for sale and selling of alcoholic beverages. *R. L. Baer et ano.* v. *District of Columbia* (D.C. Mun. App. 1962, 182 A. 2d 839).

Evidence was sufficient to sustain convictions of keeping for sale and selling alcoholic beverages without a license. *G. Williams & S. Stokes* v. *District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

§ 25–111. License classifications—Fees.

* * * * *

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of restaurants, said spirits, beer, and wine shall be sold or served only (1) to persons seated at public tables or at bona fide lunch counters, and (2) to persons in an enclosed or screened-off area in any such restaurant set aside for the accommodation of persons waiting to be seated at public tables. In the case of hotels, said beverages may be sold and served only in the private room of a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, $825 per annum; for a hotel, under one hundred rooms, $825 per annum; for a hotel of one hundred or more rooms, $1,650 per annum; for a club, $425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, $3 per month or $20 per annum: *Provided,* That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and

lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of $100; for all other passenger-carrying marine vessels serving meals, $75 per month or $825 per annum.

* * * * *

(As amended May 31, 1962, 76 Stat. 89, Pub. L. 87–470, § 1.)

AMENDMENTS

1962—Act May 31, 1962, amended subsection (g) by striking out the words "restaurants and" in the fourth sentence and adding thereto the matter above set out in the fifth sentence.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of act May 31, 1962, made clause (2) in the fifth sentence of subsection (g), effective "on the thirtieth day after the date of enactment."

§ 25–118. Revocation of license—Causes—Hearing—Discretionary closing for one year.

NOTES TO DECISIONS

2. Delinquent retailer

The Alcoholic Beverge Control Board does not have authority to prohibit further purchases by a liquor retailer who is delinquent in the payment of his account to wholesalers but can only revoke or suspend license of retailer for violating rules or regulations concerning credit. *Press Liquors, Inc.* v. *F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

§ 25–119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.

NOTES TO DECISIONS

1. Construction

Sections of Alcoholic Beverage Control Act prohibiting a manufacturer or wholesaler of alcoholic beverages from lending money or property to a retailer apply only to a manufacturer or wholesaler who has such a substantial interest in the business of its customer, or in his premises, as in the judgment of the Board may tend to influence the customer to purchase beverages from him. *Press Liquors, Inc.* v. *F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

§ 25–120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

NOTES TO DECISIONS

1. Construction

Sections of Alcoholic Beverage Control Act prohibiting a manufacturer or wholesaler of alcoholic beverages from lending money or property to a retailer apply only to a manufacturer or wholesaler who has such a substantial interest in the business of its customer, or in his premises, as in the judgment of the Board may tend to influence the customer to purchase beverages from him. *Press Liquors, Inc.* v. *F. E. Weakley, Chairman etc.* (1963, 317 F. 2d 135, 115 U.S. App. D.C. 71).

§ 25–124. Beverage taxes—Method of collection—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of $1.50 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of $1.50 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

* * * * *

Former (c) repealed by act Sept. 14, 1961.

(c) [Former subsection (d) as amended:]

Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any beverages subject to taxation hereunder other than the regular stock on hand in a passenger carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beverages for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beverage to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beverages during transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beverage by the retail licensee, be marked "canceled" and retained by him.

(3) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment,

evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever in their judgment such action is necessary to prevent frauds or evasions.

(d) [Former subsection (g).]

(e) [Former subsection (h).] [Former subsection (e) repealed by act Sept. 14, 1961.]

(f) [Former subsection (k) as amended:] [Former subsection (f) repealed by act Sept. 14, 1961.]

No taxing provision of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and wines, sold under such license in the District of Columbia during the preceding calendar month and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such beverages set forth in said report.

(g) The Commissioners are authorized to require that the immediate container of each beverage subject to tax under this chapter contain the license number of each licensee who sells or offers for sale such beverage. Such license number must be affixed at the time of display or sale of said spirits by the retailer. This subsection shall not apply to spirit containers of less than two ounces.

[Former subsections (g) and (h) renumbered as (d) and (e); (i) and (j) repealed by act Sept. 14, 1961, and former (k) renumbered as (f) by same act.]

(Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, § 801; Mar. 31, 1956, 70 Stat. 81, 82, ch. 154, §§ 301, 302(a); July 25, 1958, 72 Stat. 418, 419, Pub. L. 85–558, §§ 1—7; Sept. 14, 1961, 75 Stat. 510, 511, Pub. L. 87–238, §§ 1—5; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 401.)

AMENDMENTS

1962—Section 401 act Mar. 2, 1962, amended clauses (4) and (5) of subsection (a) by increasing the tax from $1.25 to $1.50.

1961—Subsection (c) repealed by act Sept. 14, 1961, § 1. See main volume for provisions of subsection.

Subsection (d) renumbered as (c) by section 2 of same act, and amended to read as above set out. For provisions of former subsection (d) see main volume.

Subsections (e), (f), (i), and (j) were repealed and subsections (g) and (h) were renumbered as (d) and (e) by section 3 of the same act. For the provisions of the repealed subsections, see main volume.

Subsection (k) was renumbered as (f) and amended to read as above set out, by section 4 of the same act. See original subsection (k) in main volume.

Subsection (g) was added by section 5 of the act. Sections 6, 7, 8, and 9 of the act made enactments which are set out as notes hereunder.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 402, act Mar. 2, 1962, provided that the amendments made by section 401 "shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act." [Mar. 2, 1962]

EFFECTIVE DATE OF 1961 AMENDMENT

Section 9 of act Sept. 14, 1961, provided that: "This Act [making amendments, repeals, and changes set out under 1961 Amendment note] shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act [Sept. 14, 1961]."

CONSTRUCTION OF ACT SEPT. 14, 1961, AND DECLARATION OF AUTHORITY

Section 6 of act Sept. 14, 1961, provided that:

"Nothing in this Act [repealing subsection (c) renumbering subsection (d) as subsection (c) and amending same to read as above set out; repealing subsections (e), (f), (i), and (j); renumbering (g) and (h) as (d) and (e) and renumbering (k) as (f) and amending same to read as above set out and adding subsection (g)] shall be construed as requiring the payment of any further tax on beverages to which stamps have been lawfully affixed under provisions of prior law."

Section 8 of said act provided that:

"Nothing in this Act [making the repeals, amendments and renumberings above set out] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

REDEMPTION OF UNUSED STAMPS

Section 7 of act Sept. 14, 1961, provided that:

"The Commissioners or their designated agent are authorized to redeem any unused stamps issued under the provisions of prior law or to accept same in payment of tax shown due on a monthly return."

NOTES TO DECISIONS

Affixation of tax stamps 1
Collector's control of goods in warehouse 2
Tax on sales to embassies and international organizations 3

1. Affixation of tax stamps

Alcoholic spirits remaining on retail liquor dealer's premises for more than 24 hours without having District of Columbia tax stamps affixed were properly condemned and forfeited, even though dealer had the necessary stamps on his premises. *Apex Liquors Inc.* v. *District of Columbia* (1962, 303 F. 2d 206, 112 U.S. App. D.C. 346).

2. Collector's control of goods in warehouse

Although goods in bonded warehouse are in joint custody of warehouse owner and collector of customs, they

are subject to control of collector as to release of goods from warehouse. *District of Columbia* v. *International Distributing Corp.* (1964, 331 F. 2d 817, —— U.S. App. D.C. ——).

3. Tax on sales to embassies and international organizations

Wholesaler of imported alcoholic beverages stored in private bonded warehouse under charge of customs official was not liable for District of Columbia excise taxes on sale of such beverages to foreign embassies and international organizations. *District of Columbia* v. *International Distributing Corp.* (1964, 331 F. 2d 817, —— U.S. App. D.C. ——).

§ 25–128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

NOTES TO DECISIONS

2. Evidence

Evidence sustained convictions for disorderly conduct and drinking in public. *J. M. Heard* v. *District of Columbia* (D.C. Mun App. 1962, 179 A. 2d 723).

§ 25–129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

NOTES TO DECISIONS

.50. Applications for search warrant

A lapse of four days between time police officers observed illegal activities on premises and time police department made application for search warrant based on policeman's affidavit describing sale of alcoholic beverages on premises without a license was not, under the circumstances, unreasonable as a matter of law. *G. Williams & S. Stokes* v. *District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

§ 25–138. Tax on beer.

NOTES TO DECISIONS

1. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co.* v. *District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chapter 5.—CREDIT UNIONS

Sec.
26–501 to 26–518. Repealed.
26–519. Conversion of District of Columbia credit unions into Federal credit unions—Procedure.
26–520. Approval of organization certificate by Director of the Bureau of Federal Credit Unions—Effect of approval of certificate.
26–521. Converted credit union to be subject to provisions of Federal Credit Union Act—Fee not to be charged upon conversion—Liquidation of loans of converting union—New bylaws—Bylaws inconsistent with provisions of Federal Credit Union Act.
26–522. Repeal of sections 26–501 to 26–518—Effective date.

§§ 26–501 to 26–518. Repealed. Aug. 1, 1964, 78 Stat. 377, Pub. L. 88–395, § 4, effective 30 days after Aug. 1, 1964.

Sections 26–501 to 26–518, being the act of June 23, 1932, 47 Stat. 326, ch. 272, as amended, dealt with the formation operation and management of credit unions in the District of Columbia. These sections were repealed by the act of Aug. 1, 1964, 78 Stat. 377, Pub. L. 88–395, § 4, effective 30 days after Aug. 1, 1964. However the same act authorized the conversion of District of Columbia Credit Unions to Federal Credit Unions. See sections 26–519 to 26–521.

§ 26–519. Conversion of District of Columbia credit unions into Federal credit unions—Procedure.

Any credit union organized under the District of Columbia Credit Unions Act (47 Stat. 326), as amended [sections 26–501 to 26–518], may apply for conversion into a Federal credit union by filing with the Director of the Bureau of Federal Credit Unions (hereinafter referred to as the Director), pursuant to a resolution adopted by a majority of its directors, an organization certificate meeting the requirements of section 4 of the Federal Credit Union Act (12 U.S.C. 1753), as amended. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88–395, §1.)

§ 26–520. Approval of organization certificate by Director of the Bureau of Federal Credit Unions—Effect of approval of certificate.

The Director shall approve any such organization certificate meeting such requirements. Upon such approval, the applicant credit union shall become a Federal credit union, and shall be vested with all of the assets and shall continue responsible for all of the obligations of such applicant credit union to the same extent as though the conversion had not taken place. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88–395, § 2.)

§ 26–521. Converted credit union to be subject to provisions of Federal Credit Union Act—Fee not to be charged upon conversion—Liquidation of loans of converting union—New bylaws—Bylaws inconsistent with provisions of Federal Credit Union Act.

Any District of Columbia credit union converting into a Federal credit union in accordance with sections 26–519 to 26–522 shall thereupon be subject to the limitations, vested with the powers, and charged with the liabilities conferred and imposed by the Federal Credit Union Act upon credit unions organized thereunder, except that—

(1) no fee shall be imposed upon a credit union converting pursuant to sections 26–519 to 26–522 as an incident to its conversion;

(2) any loan or investment made by a credit union converting pursuant to sections 26–519 to 26–522 in conformity with the District of Columbia Credit Unions Act [sections 26–501 to 26–518] prior to its conversion, which does not conform to the requirements of the Federal Credit Union Act and is still outstanding at the time of conversion, shall be liquidated at or before its maturity or, if it has no maturity date, in a prudent manner and within a reasonable period of time; and

(3) a credit union converting pursuant to sections 26–519 to 26–522 shall submit proposed bylaws to the Director for his approval after its conversion, but not later than thirty days following its next annual meeting or six months after the enactment of sections 26–519 to 26–522, whichever is later: *Provided,* That any existing bylaw inconsistent with any other requirements of the Federal Credit Union Act shall be deemed null and void. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88–395, § 3.)

§ 26–522. Repeal of sections 26–501 to 26–518—Effective date.

Effective thirty days after August 1, 1964, the District of Columbia Credit Unions Act (47 Stat. 326 [sections 26–502 to 26–518], as amended, is repealed and all organization certificates issued thereunder and still in force are revoked. (Aug. 1, 1964, 78 Stat. 377, Pub. L. 88–395, § 4.)

Chapter 6.—MONEY LENDERS—LICENSES

§ 26–601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

CROSS REFERENCES

Usury defined, see section 28–3303.

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see § 28: 9–203.

NOTES TO DECISIONS

18.50. Summary judgment

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law," claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. *Indian Lake Estates, Inc.* v. *Lichtman* (1962, 311 F. 2d 776, 114 U.S. App. D.C. 90).

§ 26–610. Persons, associations, and corporations exempt from operation of this chapter.

(a) Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, small business investment companies licensed and operating under the Small Business Investment Act of 1958, or real estate brokers, as defined in sections 47–1701 to 47–1709, or to life insurance companies. As used in this section the term "life insurance companies" means and includes any life insurance company authorized to do business in the District of Columbia pursuant to the Life Insurance Act (48 Stat. 1127, et seq.) and any other life insurance company which has a valid, current license to do business as such in any State of the United States.

(b) Any person or any legal entity exempted from the provisions of this Act by such subsection (a) of this section making loans secured on real or personal property in the District of Columbia who or which does not maintain an office for doing business in the District of Columbia or a residence in said District where such person or legal entity may be served with process in any suit arising out of any such transaction or in connection with such property shall appoint and maintain at all times in the District of Columbia a resident agent upon whom process may be served in any such suit, and shall register with the Commissioners of the District of Columbia or with their designee the name and address of such resident agent. Any such person or legal entity which fails to appoint and maintain at all times in the District of Columbia such resident agent shall not, while such failure continues, be entitled to the exemption provided in this section. Whenever any such person or entity does not have in the District of Columbia an agent for service of process or such agent cannot with reasonable diligence be found at his registered address, then the said Commissioners or their designee shall be the agent for the service of process for such person or entity. Service of process on the Commissioners or their designee shall be made by delivering to, and leaving with them, or with any person having charge of their office, or with their designee, duplicate copies of the process accompanied by a fee in the amount of $2.00 and such service shall be sufficient service upon such person or entity. In the event of such service, the Commissioners, or their designee, shall immediately cause one of such copies to be forwarded by registered or certified mail, addressed to such person or entity at his or its address, as such address appears on the records of the Commissioners or their designee. Any such service shall be returnable in not less than thirty days unless the rules of the court issuing such process prescribe another period, in which case such prescribed period shall govern. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on any such person or entity in any other manner now or hereafter permitted by law. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10; June 11, 1960, 74 Stat. 196, Pub. L. 86–502, § 7; Dec. 5, 1963, 77 Stat. 344, Pub. L. 88–191, § 1.)

REFERENCE IN TEXT

The Life Insurance Act referred to in subsection (a) is the act described in section 35–301.

The Small Business Investment Act of 1958, referred to in text, is the act of Aug. 21, 1958, 72 Stat. 689, Pub. L. 85–699 and is set out in various sections of titles 12, 15 and 18 of the U.S. Code.

AMENDMENTS

1963—Act Dec. 5, 1963, amended the section as follows:
(1) Inserted (a) before the first word;
(2) Inserted at the end of subsection (a) the matter relating to life insurance companies;
(3) Added subsection (b).

1960—Act June 11, 1960, amended the section by adding after the word "associations" the words, "small business investment companies licensed and operating under the Small Business Investment Act of 1958".

TITLE 27.—CEMETERIES AND CREMATORIES

Chapter 1.—CEMETERY ASSOCIATIONS—REGULATORY PROVISIONS

§ 27–119a. Disposal of dead bodies—Permits required—Movement and disposition of tissue by tissue banks—Violations.

It shall be unlawful to inter, disinter, or otherwise dispose of the dead body, or any part thereof, of any human being, except upon a permit, duly issued by the Director of Public Health of the District of Columbia, or such other person or persons as the Commissioners of the District of Columbia shall designate, or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except, upon such terms and conditions as the Commissioners may specify. Notwithstanding the provisions of the preceding sentence, the Commissioners may, in their discretion, by regulation authorize (a) tissue banks operating pursuant to the District of Columbia Tissue Bank Act or (b) other persons subject to regulations made pursuant to such Act, or both, to remove, transport, and dispose of tissue taken from such dead body without such permit. Any violation hereof shall be subject to the penalties contained in section 27–126. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676, as added Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1; Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 10.)

REFERENCE IN TEXT

District of Columbia Tissue Bank Act is set out as chapter 2A of title 2 and as amendments to this section and section 27–125.

AMENDMENT

1962—Section 10 of act Sept. 10, 1962, amended this section by striking, in the first sentence the words, "remove, transport" and by inserting immediately after "designate" the words, "or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except" and by the addition of the second sentence as above set out beginning with the word "Notwithstanding" and ending with the word "permit".

EFFECTIVE DATE OF 1962 AMENDMENT

See note section 2–251.

CROSS REFERENCE

See other penalty provisions, section 2–254.

§ 27–125. Permit to cremate—Embalming—Removal of tissue immediately after death.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the director of public health of said District, and then only when said permit is countersigned by the coroner of said District, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the coroner of said District. Notwithstanding the provisions of this section, whenever any person is pronounced dead by a physician duly licensed or duly registered under the Healing Arts Practice Act of the District of Columbia, tissue donated in accordance with the provisions of the District of Columbia Tissue Bank Act may be removed by or under the supervision of a person licensed under the authority of section 2–253 for preservation in a tissue bank operating pursuant to such Act, without regard for any time limitation, or for any permit or certificate requirement, established by this section: *Provided,* That with respect to a dead human body in the custody of the Coroner or under his jurisdiction, no tissue shall be removed therefrom for preservation except with the specific approval of the Coroner in each case. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 153, § 1; Sept. 10, 1962, 76 Stat. 537, Pub. L. 87–656, § 11.)

REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out in Title 2, chapter 1, of the D.C. Code and the District of Columbia Tissue Bank Act is set out in this section, section 27–119a, and in Title 2, chapter 2A, of the D.C. Code.

AMENDMENT

1962—Section 11 of act Sept. 10, 1962, amended section by the addition of the matter above set out and beginning with the word "Notwithstanding" and ending with the word "case."

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 2–251.

CROSS REFERENCE

For other provisions of the Tissue Bank Act, see title 2, ch. 2A and sec. 27–119a.

§ 27–126. Penalty.

CROSS REFERENCE

For other penalty provisions, see section 2–254.

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Uniform Commercial Code set out herein as subtitle I, was enacted into law on Dec. 30, 1963, by Pub. L. 88–243, 77 Stat. 630, § 1, effective Jan. 1, 1965.

Table showing where subject matter dealt with in certain sections of the D.C. Code repealed by Public Law 88–243, will be found in the Uniform Commercial Code, set out in subtitle I herein:

Repealed sections	*Uniform Commercial Code*
28–101	28:3–102.
28–102	28:3–104, 28:3–107, 28:3–108.
28–103	28:3–106.
28–104	28:3–105.
28–105	28:3–109.
28–106	28:3–112.
28–107	28:3–112, 28:3–113.
28–108	28:3–108.
28–109	28:3–110.
28–110	28:3–111.
28–111	28:3–112.
28–112	28:3–114.
28–113	28:3–114.
28–114	28:3–115.
28–115	28:3–115.
28–116	28:3–115.
28–117	28:3–202.
28–118	28:3–118.
28–119	28:3–401.
28–120	28:3–403.
28–121	28:3–403.
28–122	28:3–403.
28–123	28:3–204, 5, 6.
28–124	28:3–401, 28:3–404.
28–201	28:3–408.
28–202	28:3–303.
28–203	28:3–303.
28–204	28:3–303.
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28–609	28:3–504.
28–610	28:3–511.
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28–701	28:3–501, 28:3–502.
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28–703	28:3–508.
28–704	28:3–508.
28–705	28:3–508.
28–706	28:3–508.
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28–925	28:3–507.
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28–929	28:3–509.
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28–934	28:3–501.
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SUBTITLE I.—UNIFORM COMMERCIAL CODE

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Enacting Clause

Enacting clause of act Dec. 30, 1963, Pub. L. 88–243, provided as follows: "That the Uniform Commercial Code is enacted as Subtitle I of Title 28 of the District of Columbia Code, in which it shall be designated 'Subtitle I—Uniform Commercial Code', and may be cited as 'D.C. Code, § —', as follows:"

Effective Date

Section 16 of act Dec. 30, 1963, Pub. L. 88–243, provided as follows: "This Act [Uniform Commercial Code] shall become effective on Jan. 1, 1965. Laws enacted after the approval of this Act, that are inconsistent with this Act, supersede it to the extent of the inconsistency."

Savings and Continuation Provisions

Section 15 (b) and (c) of act Dec. 30, 1963, Pub. L. 88–243, set out as subtitle I of title 28 and other parts of the Code [see distribution tables] provided as follows: "(b) Except as provided by subsection (c) of this section, transactions validly entered into before the effective date specified in section 16 of this Act [Pub. L. 88–243, effective Jan. 1, 1965] and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

"(c) The perfection of a security interest, as defined in section 28:1–201 of the District of Columbia Code, and however denominated in any law repealed by this Act, which was perfected when this Act takes effect by a filing, refiling or recording under a law repealed by this Act and requiring a further filing, refiling or recording to continue its perfection, continue until and will lapse on the date provided by the law so repealed for such further filing, refiling or recording, unless in such case, a continuation statement is filed, in the office of the Recorder of Deeds of the District, by the secured party within twelve months before the perfection of the security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identifying the original security agreement, however denominated, state the date of the last filing, refiling or recording and the filing number, and further state that the original security agreement is still effective. Except as herein specified, the provisions of section 28:9–403(3) of the Code apply to such a continuation statement."

Article 1.—GENERAL PROVISIONS

Part 1.—Short Title, Construction, Application and Subject Matter

Sec.
28:1–101. Short title.
28:1–102. Purposes; rules of construction; variation by agreement.
28:1–103. Supplementary general principles of law applicable.
28:1–104. Construction against implicit repeal.
28:1–105. Territorial application of this subtitle; parties' power to choose applicable law.
28:1–106. Remedies to be liberally administered.
28:1–107. Waiver or renunciation of claim or right after breach.
28:1–108. Severability.
28:1–109. Section captions.

Part 2.—General Definitions and Principles of Interpretation

28:1–201. General definitions.
28:1–202. Prima facie evidence by third party documents.
28:1–203. Obligation of good faith.
28:1–204. Time; reasonable time; "seasonably".
28:1–205. Course of dealing and usage of trade.
28:1–206. Statute of frauds for kinds of personal property not otherwise covered.
28:1–207. Performance or acceptance under reservation of rights.
28:1–208. Option to accelerate at will.

Part 1.—Short Title, Construction, Application and Subject Matter

§ 28:1–101. Short title.

This subtitle shall be known and may be cited as Uniform Commercial Code. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–102. Purposes; rules of construction; variation by agreement.

(1) This subtitle shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this subtitle are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this subtitle may be varied by agreement, except as otherwise provided in this subtitle and except that the obligations of good faith, diligence, reasonableness and care prescribed by this subtitle may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this subtitle of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this subtitle unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–104. Construction against implicit repeal.

This subtitle being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–105. Territorial application of this subtitle; parties' power to choose applicable law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to the District and also to a state or nation the parties may agree that the law either of the District or of such state or nation shall govern their rights and duties. Failing such agreement this subtitle applies to transactions bearing an appropriate relation to the District.

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 28:2–402.

Applicability of the article on bank deposits and collections. Section 28:4–102.

Bulk transfers subject to the article on bulk transfers. Section 28:6–102.

Applicability of the article on investment securities. Section 28:8–106.

Policy and scope of the article on secured transactions. Sections 28:9–102 and 28:9–103.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–106. Remedies to be liberally administered.

(1) The remedies provided by this subtitle shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this subtitle or by other rule of law.

(2) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–107. Waiver or renunciation of claim or right after breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–108. Severability.

If any provision or clause of this subtitle or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are declared to be severable. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–109. Section captions.

Section captions are parts of this subtitle. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 2.—General Definitions and Principles of Interpretation

§ 28:1–201. General definitions.

Subject to additional definitions contained in the subsequent articles of this subtitle which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this subtitle:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by impli-

cation from other circumstances including course of dealing or usage of trade or course of performance as provided in this subtitle (sections 28:1–205 and 2–208). Whether an agreement has legal consequences is determined by the provisions of this subtitle, if applicable; otherwise by the law of contracts (section 28:1–103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this subtitle and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(14a) "District" means the District of Columbia; and "state" includes the District.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this subtitle to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this subtitle.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this subtitle.

(30) "Person" includes an individual or an organization see section 28:1–102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28:2–401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 28:2–401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 28:2–326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28:3–303, 28:4–208 and 28:4–209) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. (Dec. 30, 1963, 77 Stat. 632, Pub. L. 88–243, § 1, eff. Jan. 1, 1965; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88–509, § 4.)

AMENDMENT

1964—Section 4 of act Aug. 30, 1964, effective Jan. 1, 1965, amended the last sentence of clause 27 by changing "such information" to read "the communication".

§ 28:1–202. Prima facie evidence by third party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by

the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–203. Obligation of good faith.

Every contract or duty within this subtitle imposes an obligation of good faith in its performance or enforcement. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–204. Time; reasonable time; "seasonably".

(1) Whenever this subtitle requires any action to be taken within a reasonable time, any time which is not manifested unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken, "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–205. Course of dealing and usage of trade.

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–206. Statute of frauds for kinds of personal property not otherwise covered.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 28:2–201) nor of securities (section 28:8–319) nor to security agreements (section 28:9–203). (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–207. Performance or acceptance under reservation of rights.

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient. (Dec. 30, 1963, 77 Stat. 637, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:1–208. Option to accelerate at will.

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised. (Dec. 30, 1963, 77 Stat. 637, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

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PART 1.—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

§ 28:2–101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Sales. (Dec. 30, 1963, 77 Stat. 639, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–102. Scope; certain security and other transactions excluded from this article.

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. (Dec. 30, 1963, 77 Stat. 639, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–103. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance". Section 28:2–606.
"Banker's credit". Section 28:2–325.
"Between merchants". Section 28:2–104.
"Cancellation". Section 28:2–106(4).
"Commercial unit". Section 28:2–105.
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"Person in position of seller". Section 28:2–707.
"Present sale". Section 28:2–106.
"Sale". Section 28:2–106.
"Sale on approval". Section 28:2–326.
"Sale or return". Section 28:2–326.
"Termination". Section 28:2–106.

(3) The following definitions in other articles apply to this article:

"Check". Section 28: 3–104.
"Consignee". Section 28: 7–102.
"Consignor". Section 28: 7–102.
"Consumer goods". Section 28: 9–109.
"Dishonor". Section 28: 3–507.
"Draft". Section 28: 3–104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 639, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–104. Definitions: "merchant"; "between merchants"; "financing agency".

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28: 2–707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. (Dec. 30, 1963, 77 Stat. 640, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit".

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 28: 2–107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. (Dec. 30, 1963, 77 Stat. 640, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation".

(1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of

goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 28: 2–401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. (Dec. 30, 1963, 77 Stat. 641, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–107. Goods to be severed from realty; recording.

(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. (Dec. 30, 1963, 77 Stat. 641, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 2.—Form, Formation and Readjustment of Contract

§ 28:2–201. Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 28:2–606).

(Dec. 30, 1963, 77 Stat. 642, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–202. Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade (section 28:1–205) or by course of performance (section 28:2–208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(Dec. 30, 1963, 77 Stat. 642, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–203. Seals inoperative.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer. (Dec. 30, 1963, 77 Stat. 642, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–204. Formation in general.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–205. Firm offers.

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–206. Offer and acceptance in formation of contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–207. Additional terms in acceptance or confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this subtitle. (Dec. 30, 1963, 77 Stat. 643, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–208. Course of performance or practical construction.

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 28:1–205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. (Dec. 30, 1963, 77 Stat. 644, Pub L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–209. Modification, rescission and waiver.

(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this article (section 28:2–201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3), it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required by any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. (Dec. 30, 1963, 77 Stat. 644, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–210. Delegation of performance; assignment of rights.

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the

assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 28:2-609). (Dec. 30, 1963, 77 Stat. 644, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 3.—General Obligation and Construction of Contract

§ 28:2-301. General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-302. Unconscionable contract or clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-303. Allocation or division of risks.

Where this article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-304. Price payable in money, goods, realty, or otherwise.

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-305. Open price term.

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. (Dec. 30, 1963, 77 Stat. 645, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-306. Output, requirements and exclusive dealings.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. (Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-307. Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. (Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-308. Absence of specified place for delivery.

Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

(Dec. 30, 1963, 77 Stat. 646, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–309. Absence of specific time provisions; notice of termination.

(1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. (Dec. 30, 1963, 77 Stat. 646, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28:2–513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

(Dec. 30, 1963, 77 Stat. 646, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–311. Options and cooperation respecting performance.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of section 28:2–204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of section 28:2–319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

(Dec. 30, 1963, 77 Stat. 647, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–312. Warranty of title and against infringement; buyer's obligation against infringement.

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. (Dec. 30, 1963, 77 Stat. 647, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–313. Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. (Dec. 30, 1963, 77 Stat. 647, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-314. Implied warranty: merchantability; usage of trade.

(1) Unless excluded or modified (section 28:2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 28:2-316), other implied warranties may arise from course of dealing or usage of trade. (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-315. Implied warranty: fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-316. Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (section 28:2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 28:2-718 and 28:2-719). (Dec. 30, 1963, 77 Stat. 648, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-317. Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

(Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-318. Third party beneficiaries of warranties express or implied.

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88-243, § 1.)

§ 28:2-319. F.O.B. and F.A.S. terms.

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 28:2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (section 28:2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (section 28:8-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (section 28:2–311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. (Dec. 30, 1963, 77 Stat. 649, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–320. C.I.F. and C. & F. terms.

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. (Dec. 30, 1963, 77 Stat. 650, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–321. C.I.F. or C. & F.: "net landed weights"; "payment on on arrival"; warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. (Dec. 30, 1963, 77 Stat. 650, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–322. Delivery "ex-ship".

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

(Dec. 30, 1963, 77 Stat. 651, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–323. Form of bill of lading required in overseas shipment; "overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 28:2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. (Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-324. "No arrival, no sale" term.

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 28:2-613).

(Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-325. "Letter of credit" term; "confirmed credit".

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-326. Sale on approval and sale or return; consignment sales and rights of creditors.

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 28:2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 28:2-202). (Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-327. Special incidents of sale on approval and sale or return.

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

(Dec. 30, 1963, 77 Stat. 652, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-328. Sale by auction.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auc-

tioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. (Dec. 30, 1963, 77 Stat. 653, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 4.—Title, Creditors and Good Faith Purchasers

§ 28:2–401. Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28:2–501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". (Dec. 30, 1963, 77 Stat. 653, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–402. Rights of seller's creditors against sold goods.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (sections 28:2–502 and 28:2–716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

(Dec. 30, 1963, 77 Stat. 654, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–403. Power to transfer; good faith purchase of goods; "entrusting".

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a

merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7). (Dec. 30, 1963, 77 Stat. 654, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 5.—Performance

§ 28:2-501. Insurable interest in goods; manner of identification of goods.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-502. Buyer's right to goods on seller's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. (Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form except as provided in this article with respect to bills of lading in a set (subsection (2) of section 28:2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

(Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:2-504. Shipment by seller.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. (Dec. 30, 1963, 77 Stat. 656, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–505. Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 28:2–507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. (Dec. 30, 1963, 77 Stat. 656, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–507. Effect of seller's tender; delivery on condition.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–508. Cure by seller of improper tender or delivery; replacement.

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28:2–505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of section 28:2–503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 28:2–327) and on effect of breach on risk of loss (section 28:2–510). (Dec. 30, 1963, 77 Stat. 657, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–510. Effect of breach on risk of loss.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has

passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-511. Tender of payment by buyer; payment by check.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this subtitle on the effect of an instrument on an obligation (section 28:3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-512. Payment by buyer before inspection.

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this subtitle (section 28:5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-513. Buyer's right to inspection of goods.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 28:2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides.

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. (Dec. 30, 1963, 77 Stat. 658, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-514. When documents deliverable on acceptance; when on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-515. Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

(Dec. 30, 1963, 77 Stat. 659, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 6.—Breach, Repudiation and Excuse

§ 28:2-601. Buyer's rights on improper delivery.

Subject to the provisions of this article on breach in installment contracts (section 28:2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 28:2-718 and 28:2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

(Dec. 30, 1963, 77 Stat. 659, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2-602. Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (sections 28:2-603 and 28:2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 28:2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions

of this article on Seller's remedies in general (section 28: 2–703). (Dec. 30, 1963, 77 Stat. 659, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–603. Merchant buyer's duties as to rightfully rejected goods.

(1) Subject to any security interest in the buyer (subsection (3) of section 28:2–711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–604. Buyer's options as to salvage of rightfully rejected goods.

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–605. Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payments against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–606. What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 28:2–602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. (Dec. 30, 1963, 77 Stat. 660, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2–312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of section 28:2–312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsection (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 28:2–312). (Dec. 30, 1963, 77 Stat. 661, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–608. Revocation of acceptance in whole or in part.

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. (Dec. 30, 1963, 77 Stat. 661, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–609. Right to adequate assurance of performance.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–610. Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (section 28:2–703 or section 28:2–711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 28:2–704).

(Dec. 30, 1963, 77 Stat. 662, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–611. Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (section 28:2–609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–612. "Installment contract"; breach.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he bring an action with respect only to past installments or demands performance as to future installments. (Dec. 30, 1963, 77 Stat. 662, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–613. Casualty to identified goods.

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 28:2–324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

(Dec. 30, 1963, 77 Stat. 663, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–614. Substituted performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–615. Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

(Dec. 30, 1963, 77 Stat. 663, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–616. Procedure on notice claiming excuse.

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (section 28:2–612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 7.—Remedies

§ 28:2–701. Remedies for breach of collateral contracts not impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–702. Seller's remedies on discovery of buyer's insolvency.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 28:2–705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article (section 28:2–403). Successful reclamation of goods excludes all other remedies with respect to them. (Dec. 30, 1963, 77 Stat. 664, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–703. Seller's remedies in general.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 28:2–612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (section 28:2–705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (section 28:2–706);

(e) recover damages for non-acceptance (section 28:2–708) or in a proper case the price (section 28:2–709);

(f) cancel.

(Dec. 30, 1963, 77 Stat. 664, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. (Dec. 30, 1963, 77 Stat. 665, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28:2–702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. (Dec. 30, 1963, 77 Stat. 665, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–706. Seller's resale including contract for resale.

(1) Under the conditions stated in section 28:2–703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (section 28:2–710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 28:2–707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of section 28:2–711). (Dec. 30, 1963, 77 Stat. 665, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–707. "Person in the position of a seller."

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (section 28:2–705) and resell (section 28:2–706) and recover incidental damages (section 28:2–710). (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–708. Seller's damages for non-acceptance or repudiation.

(1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 28:2–723), the measure of damages

for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 28:2–710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (section 28:2–710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–709. Action for the price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 28:2–610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. (Dec. 30, 1963, 77 Stat. 666, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–710. Seller's incidental damages.

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–711. Buyer's remedies in general; buyer's security interest in rejected goods.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole of the breach goes to the whole contract (section 28:2–612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this article (section 28:2–713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this article (section 28:2–502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this article (section 28:2–716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 28:2–706). Dec. 30, 1963, 77 Stat. 667, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–712. "Cover"; buyer's procurement of substitute goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 28:2–715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. (Dec. 30, 1963, 77 Stat. 667, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–713. Buyer's damages for non-delivery or repudiation.

(1) Subject to the provisions of this article with respect to proof of market price (section 28:2–723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (section 28:2–715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–714. Buyer's damages for breach in regard to accepted goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of section 28:2–607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–715. Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

(Dec. 30, 1963, 77 Stat. 668, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–716. Buyer's right to specific performance or replevin.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–717. Deduction of damages from the price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. (Dec. 30, 1963, 77 Stat. 668, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–718. Liquidation or limitation of damages; deposits.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 28:2–706). (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–719. Contractual modification or limitation of remedy.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not. (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–720. Effect of "cancellation" or "rescission" on claims for antecedent breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. (Dec. 30, 1963, 77 Stat. 669, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–721. Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–722. Who can sue third parties for injury to goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–723. Proof of market price: time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 28:2–708 or section 28:2–713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–724. Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the prepartion of such a report may be shown to affect its weight but not its admissibility. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:2–725. Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this subtitle becomes effective. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

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PART 1.—SHORT TITLE, FORM AND INTERPRETATION

§ 28:3-101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Commercial Paper. (Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-102. Definitions and index of definitions.

(1) In this article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgement of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this article and the sections in which they appear are:

"Acceptance". Section 28:3-410.
"Accommodation party". Section 28:3-415.
"Alteration". Section 28:3-407.
"Certificate of deposit". Section 28:3-104.
"Certification". Section 28:3-411.
"Check". Section 28:3-104.
"Definite time". Section 28:3-109.
"Dishonor". Section 28:3-507.
"Draft". Section 28:3-104.
"Holder in due course". Section 28:3-302.
"Negotiation". Section 28:3-202.
"Note". Section 28:3-104.
"Notice of dishonor". Section 28:3-508.
"On demand". Section 28:3-108.
"Presentment". Section 28:3-504.
"Protest". Section 28:3-509.
"Restrictive Indorsement". Section 28:3-205.
"Signature". Section 28:3-401.

(3) The following definitions in other articles apply to this article.

"Account". Section 28:4-104.
"Banking day". Section 28:4-104.
"Clearing house". Section 28:4-104.
"Collecting bank". Section 28:4-105.
"Customer". Section 28:4-104.
"Depositary bank". Section 28:4-105.
"Documentary draft". Section 28:4-104.
"Intermediary bank". Section 28:4-105.
"Item". Section 28:4-104.
"Midnight deadline". Section 28:4-104.
"Payor bank". Section 28:4-105.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 672, Pub. L. 243, § 1, eff. Jan. 1, 1965.)

§ 28:3-103. Limitations on scope of article.

(1) This article does not apply to money, documents of title or investment securities.

(2) The provisions of this article are subject to the provisions of the article on bank deposits and collections (article 4) and secured transactions (article 9). (Dec. 30, 1963, 77 Stat. 673, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note".

(1) Any writing to be a negotiable instrument within this article must

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other prom-

ise, order, obligation or power given by the maker or drawer except as authorized by this article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgement by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other articles of this subtitle, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable. (Dec. 30, 1963, 77 Stat. 673, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–105. When promise or order unconditional.

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

(Dec. 30, 1963, 77 Stat. 674, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–106. Sum certain.

(1) The sum payable is a sum certain even though it is to be paid

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–107. Money.

(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. (Dec. 30, 1963, 77 Stat. 674, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–108. Payable on demand.

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. (Dec. 30, 1963, 77 Stat. 675, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–109. Definite time.

(1) An instrument is payable at a definite time if by its terms it is payable—

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the marker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. (Dec. 30, 1963, 77 Stat. 675, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–110. Payable to order.

(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer, or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. (Dec. 30, 1963, 77 Stat. 675, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-111. Payable to bearer.

An instrument is payable to bearer when by its terms it is payable to—

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

(Dec. 30, 1963, 77 Stat. 675, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-112. Terms and omissions not affecting negotiability.

(1) The negotiability of an instrument is not affected by—

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (section 28:3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-113. Seal.

An instrument otherwise negotiable is within this article even though it is under a seal. (Dec. 30, 1963, 7 Stat. 676, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-114. Date, antedating, postdating.

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated, or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-115. Incomplete instruments.

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (section 28:3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is authorized is on the party so asserting. (Dec. 30, 1963, 77 Stat. 676, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-116. Instruments payable to two or more persons.

An instrument payable to the order of two or more persons

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

(Dec. 30, 1963, 77 Stat. 676, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-117. Instruments payable with words of description.

An instrument made payable to a named person with the addition of words describing him

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

(Dec. 30, 1963, 77 Stat. 676, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-118. Ambiguous terms and rules of construction.

The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 28:3-604 tenders full payment when the instrument is due.

(Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-119. Other writings affecting instrument.

(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-120. Instruments "payable through" bank.

An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-121. Instruments payable at bank.

A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment. (Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-122. Accrual of cause of action.

(1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

(Dec. 30, 1963, 77 Stat. 677, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 2.—Transfer and Negotiation

§ 28:3-201. Transfer: right to indorsement.

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has hifself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

(Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-202. Negotiation.

(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-203. Wrong or misspelled name.

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-204. Special indorsement; blank indorsement.

(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Dec. 30, 1963, 77 Stat. 678, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–205. Restrictive indorsements.

An indorsement is restrictive which either

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the indorser or of another person.

(Dec. 30, 1963, 77 Stat. 679, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–206. Effect of restrictive indorsement.

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person present for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of section 28:3–205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of section 28:3–302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of section 28:3–205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of section 23:3–302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of section 28:3–304). (Dec. 30, 1963, 77 Stat. 679, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–207. Negotiation effective although it may be rescinded.

(1) Negotiation is effective to transfer the instrument although the negotiation is

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. (Dec. 30, 1963, 77 Stat. 679, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–208. Reacquisition.

Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. (Dec. 30, 1963, 77 Stat. 679, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 3.—Rights of a Holder

§ 28:3–301. Rights of a holder.

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in section 28:3–603 on payment or satisfaction, discharge it or enforce payment in his own name. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–302. Holder in due course.

(1) A holder in due course is a holder who takes the instrument

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–303. Taking for value.

A holder takes the instrument for value

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

(Dec. 30, 1963, 77 Stat. 680, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-304. Notice to purchaser.

(1) The purchaser has notice of a claim or defense if

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District is presumed to be thirty days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. (Dec. 30, 1963, 77 Stat. 680, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-305. Rights of a holder in due course.

To the extent that a holder is a holder in due course he takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

(Dec. 30, 1963, 77 Stat. 681, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-306. Rights of one not holder in due course.

Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 28:3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

(Dec. 30, 1963, 77 Stat. 681, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-307. Burden of establishing signatures, defenses and due course.

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. (Dec. 30, 1963, 77 Stat. 681, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 4.—Liability of Parties

§ 28:3-401. Signature.

(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-402. Signature in ambiguous capacity.

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-403. Signature by authorized representative.

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established betwen the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-404. Unauthorized signatures.

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-405. Impostors; signature in name of payee.

(1) An indorsement by any person in the name of a named payee is effective if

(a) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-406. Negligence contributing to alteration or unauthorized signature.

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-407. Alteration.

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-408. Consideration.

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 28: 3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this subtitle under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-409. Draft not an assignment.

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-410. Definition and operation of acceptance.

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not

been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–411. Certification of a check.

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–412. Acceptance varying draft.

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–413. Contract of maker, drawer and acceptor.

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 28:3–115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–414. Contract of indorser; order of liability.

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–415. Contract of accommodation party.

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. (Dec. 30, 1963, 77 Stat. 684, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–416. Contract of guarantor.

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforcible notwithstanding any statute of frauds. (Dec. 30, 1963, 77 Stat. 685, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–417. Warranties on presentment and transfer.

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. (Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-418. Finality of payment or acceptance.

Except for recovery of bank payments as provided in the article on bank deposits and collections (article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. (Dec. 30, 1963, 77 Stat. 686, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-419. Conversion of instrument; innocent representative.

(1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this subtitle concerning restrictive indorsements a representative, including a depositary or collecting bank, who has a good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 28:3-205 and 28:3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor. (Dec. 30, 1963, 77 Stat. 686, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 5.—Presentment, Notice of Dishonor and Protest

§ 28:3-501. When presentment, notice of dishonor, and protest necessary or permissible.

(1) Unless excused (section 28:3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 28:3-502(1)(b).

(2) Unless excused (section 28:3-511)

(a) notice of any dishonor is necessary to charge any endorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 28:3-502(1)(b).

(3) Unless excused (section 28:3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1, eff. Jan. 1, 1965; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 5.)

AMENDMENT

1964—Section 5 of act Aug. 30, 1964, effective Jan. 1, 1965, amended the first sentence of clause (1)(a) by changing the word "that" to "than".

§ 28:3-502. Unexcused delay; discharge.

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-503. Time of presentment.

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an indorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. (Dec. 30, 1963, 77 Stat. 687, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-504. How presentment made.

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in section 28:4-210 presentment may be made in the manner and with the result stated in that section. (Dec. 30, 1963, 77 Stat. 688, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-505. Rights of party to whom presentment is made.

(1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and

the time for acceptance or payment runs from the time of compliance. (Dec. 30, 1963, 77 Stat. 688, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-506. Time allowed for acceptance or payment.

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-507. Dishonor; holder's right of recourse; term allowing re-presentment.

(1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (section 28:4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-508. Notice of dishonor.

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified. (Dec. 30, 1963, 77 Stat. 689, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-509. Protest; noting for protest.

(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-510. Evidence of dishonor and notice of dishonor.

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3–511. Waived or excused presentment, protest or notice of dishonor or delay therein.

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. (Dec. 30, 1963, 77 Stat. 690, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 6.—Discharge

§ 28:3–601. Discharge of parties.

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (section 28:3–603); or

(b) tender of payment (section 28:3–604); or

(c) cancellation or renunciation (section 28:3–605); or

(d) impairment of right of recourse or of collateral (section 28:3–606); or

(e) reacquisition of the instrument by a prior party (section 28:3–208); or

(f) fraudulent and material alteration (section 28:3–407); or

(g) certification of a check (section 28:3–411); or

(h) acceptance varying a draft (section 28:3–412); or

(i) unexcused delay in presentment or notice of dishonor or protest (section 28:3–502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this article except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 28:3–606).

(Dec. 30, 1963, 77 Stat. 691, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–602. Effect of discharge against holder in due course.

No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument. (Dec. 30, 1963, 77 Stat. 691, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–603. Payment or satisfaction.

(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (section 28:3–201). (Dec. 30, 1963, 77 Stat. 691, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–604. Tender of payment.

(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs, and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. (Dec. 30, 1963, 77 Stat. 682, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3-605. Cancellation and renunciation.

(1) The holder of an instrument may even without consideration discharge any party.

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. (Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-606. Impairment of recourse or of collateral.

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failue or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

(Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 7.—Advice of International Sight Draft

§ 28:3-701. Letter of advice of international sight draft.

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering oustanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 8.—Miscellaneous

§ 28:3-801. Drafts in a set.

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 28:4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-802. Effect of instrument on obligation for which it is given.

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation.

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. (Dec. 30, 1963, 77 Stat. 693, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3-803. Notice to third party.

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound. (Dec. 30, 1963, 77 Stat. 694, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:3–804. Lost, destroyed or stolen instruments.

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. (Dec. 30, 1963, 77 Stat. 694, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:3–805. Instruments not payable to order or to bearer.

This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument. (Dec. 30, 1963, 77 Stat. 694, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Article 4.—BANK DEPOSITS AND COLLECTIONS

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Part 1.—General Provisions and Definitions

§ 28:4–101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–102. Applicability.

(1) To the extent that items within this article are also within the scope of articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of article 3 but the provisions of article 8 govern those of this article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–103. Variation by agreement; measure of damages; certain action constituting ordinary care.

(1) The effect of the provisions of this article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action

or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. (Dec. 30, 1963, 77 Stat. 695, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–104. Definitions and index of definitions.

(1) In this article unless the context otherwise requires

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

"Collecting bank". Section 28:4–105.
"Depositary bank". Section 28:4–105.
"Intermediary bank". Section 28:4–105.
"Payor bank". Section 28:4–105.
"Presenting bank". Section 28:4–105.
"Remitting bank". Section 28:4–105.

(3) The following definitions in other articles apply to this article:

"Acceptance". Section 28:3–410.
"Certificate of deposit". Section 28:3–104.
"Certification". Section 28:3–411.
"Check". Section 28:3–104.
"Draft". Section 28:3–104.
"Holder in due course". Section 28:3–302.
"Notice of dishonor". Section 28:3–508.
"Presentment". Section 28:3–504.
"Protest". Section 28:3–509.
"Secondary party". Section 28:3–102.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 696, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–105. "Depositary bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank".

In this article unless the context otherwise requires:

(a) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item.

(Dec. 30, 1963, 77 Stat. 697, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–106. Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3. The receipt of any notice or order by or the knowledge of one branch or separate office of a bank is not actual or constructive notice to or knowledge of any other branch or office of the same bank and does not impair the right of another branch or office to be a holder in due course of an item. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–107. Time of receipt of items.

(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.) (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–108. Delays.

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this subtitle for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this subtitle or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. (Dec. 30, 1963, 77 Stat. 697, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–109. Process of posting.

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;

(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item.

(Dec. 30, 1963, 77 Stat. 698, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 2.—Collection of Items: Depositary and Collecting Banks

§ 28:4–201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay any bank".

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of section 28:4–211 and sections 28:4–212 and 28:4–213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank.

(Dec. 30, 1963, 77 Stat. 698, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–202. Responsibility for collection; when action seasonable.

(1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of section 28:4–212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. (Dec. 30, 1963, 77 Stat. 698, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–203. Effect of instructions.

Subject to the provisions of article 3 concerning conversion of instruments (section 28:3–419) and the provisions of both article 3 and this article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–204. Methods of sending and presenting; sending direct to payor bank.

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–205. Supplying missing indorsement; no notice from prior indorsement.

(1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necesssary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–206. Transfer between banks.

Any agreed method which identifies the transferor bank is sufficient for the item's transfer to another bank. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.

(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement of words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim. (Dec. 30, 1963, 77 Stat. 699, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–208. Security interest of collecting bank in items, accompanying documents and proceeds.

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying docu-

ments for purposes other than collection, the security interest continues and is subject to the provisions of article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1) (b) of section 28:9–203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

(Dec. 30, 1963, 77 Stat. 700, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–209. When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of section 28:3–302 on what constitutes a holder in due course. (Dec. 30, 1963, 77 Stat. 701, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet, any requirement of the party to accept or pay under section 28:3–505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 28:3–505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts. (Dec. 30, 1963, 77 Stat. 701, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–211. Media of remittance; provisional and final settlement in remittance cases.

(1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

(Dec. 30, 1963, 77 Stat. 701, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–212. Right of charge-back or refund.

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of section 28:4–211 and subsections (2) and (3) of section 28:4–213).

(2) (Omitted.)

(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 28:4–301).

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. (Dec. 30, 1963, 77 Stat. 702, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4-213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash;or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of section 28:4–211, subsection (2) of section 28:4–213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. (Dec. 30, 1963, 77 Stat. 703, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4-214. Insolvency and preference.

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of section 28:4–211, subsections (1)(d), (2) and (3) of section 28:4–213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. (Dec. 30, 1963, 77 Stat. 703, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 3.—Collection of Items: Payor Banks

§ 28:4-301. Deferred posting; recovery of payment by return of items; time of dishonor.

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of section 28:4–213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or de-

livered to the bank's customer or transferor or pursuant to his instructions.

(Dec. 30, 1963, 77 Stat. 704, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–302. Payor bank's responsibility for late return of item.

In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 28:4–207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

(Dec. 30, 1963, 77 Stat. 704, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(a) accepted or certified the item;

(b) paid the item in cash;

(c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1)(d) of section 28:4–213 and section 28:4–302 dealing with the payor bank's responsibility for late return items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 4.—Relationship Between Payor Bank and Its Customer

§ 28:4–401. When bank may charge customer's account.

(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

(a) the original tenor of his altered item; or

(b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

(Dec. 30, 1963, 77 Stat. 705, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–402. Bank's liability to customer for wrongful dishonor.

A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–403. Customer's right to stop payment; burden of proof of loss.

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 28:4–303. No such order shall be valid, however, unless it shall be in writing specifically describing the item to which it relates by stating the amount, date and payee thereof.

(2) Anything in this section 28:4–403 to the contrary notwithstanding, any stop payment order transmitted by telephone by a customer to an officer of a bank, while such officer is on the premises thereof, shall be accepted by such bank, upon such identification that will ensure the order has been transmitted by such customer, as an effective order for a period of twenty-four hours, after which time it shall no longer be valid unless followed by a written order as provided in this section 28:4–403. A written order is effective for only six months unless renewed in writing. The bank may, at its option and without liability, stop payment of an item after the expiration of a stop payment order or any renewal thereof relating to such item.

(3) The burden of estabilishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. (Dec. 30, 1963, 77 Stat. 705, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–404. Bank not obligated to pay check more than six months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in the

absence of an effective stop payment order in accordance with section 28:4-403. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-405. Death or incompetence of customer.

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-406. Customer's duty to discover and report unauthorized signature or alteration.

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. (Dec. 30, 1963, 77 Stat. 706, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-407. Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

(Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 5.—Collection of Documentary Drafts

§ 28:4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. (Dec. 30, 1963, 77 Stat. 707. Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-502. Presentment of "on arrival" drafts.

When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

Unless otherwise instructed and except as provided in article 5 a bank presenting a documentary draft

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment,

may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. (Dec. 30, 1963, 77 Stat. 707, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:4–504. Privilege of presenting bank to deal with goods; security interest for expenses.

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Article 5.—LETTERS OF CREDIT

Sec.

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28:5–102. Scope.
28:5–103. Definitions.
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28:5–106. Time and effect of establishment of credit.
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28:5–109. Issuer's obligation to its customer.
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28:5–114. Issuer's duty and privilege to honor; right to reimbursement
28:5–115. Remedy for improper dishonor or anticipatory repudiation.
28:5–116. Transfer and assignment.
28:5–117. Insolvency of bank holding funds for documentary credit.

§28:5–101. Short title.

The article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–102. Scope.

(1) This article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this subtitle or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–103. Definitions.

(1) In this article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (section 28:5–102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this article and the sections in which they appear are:

"Notation of credit". Section 28:5–108.

"Presenter". Section 28:5–112(3).

(3) Definitions in other articles apply to this article and the sections in which they appear are:

"Accept" or "Acceptance". Section 28:3–410.

"Contract for sale". Section 28:2–106.

"Draft". Section 28:3–104.

"Holder in due course". Section 28:3–302.

"Midnight deadline". Section 28:4–104.

"Security". Section 28:8–102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88–241, § 1, eff. Jan. 1, 1965.)

§ 28:5–104. Formal requirements; signing.

(1) Except as otherwise required in subsection (1)(c) of section 28:5–102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–105. Consideration.

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–106. Time and effect of establishment of credit.

(1) Unless otherwise agreed a credit is established

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–107. Advice of credit; confirmation; error in statement of terms.

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–108. "Notation credit"; exhaustion of credit.

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit"

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

(Dec. 30, 1963, 77 Stat. 710, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–109. Issuer's obligation to its customer.

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–110. Availability of credit in portions; presenter's reservation of lien or claim.

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–111. Warranties on transfer and presentment.

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under articles 7 and 8. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88–243, §1, eff. Jan. 1, 1965.)

§ 28:5–112. Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand, or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–113. Indemnities.

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicity agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicity agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

(Dec. 30, 1963, 77 Stat. 712, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–114. Issuer's duty and privilege to honor; right to reimbursement.

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 28:7–507) or of a security (section 28:8–306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 28:3–302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 28:7–502) or a bona fide purchaser of a security (section 28:8–302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4)(5) (Omitted.) (Dec. 30, 1963, 77 Stat. 712, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–115. Remedy for improper dishonor or anticipatory repudiation.

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 28:2–707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 28:2–710 on seller's incidental damages and interest but

less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 28:2–610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–116. Transfer and assignment.

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under article 9 on secured transactions and is governed by that article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:5–117. Insolvency of bank holding funds for documentary credit.

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of section 28:5–102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Article 6.—BULK TRANSFERS

Sec.

28:6–101. Short title.
28:6–102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.
28:6–103. Transfers excepted from this article.
28:6–104. Schedule of property, list of creditors.
28:6–105. Notice to creditors.
28:6–106. (Omitted.)
28:6–107. The notice.
28:6–108. Auction sales; "auctioneer".
28:6–109. What creditors protected.
28:6–110. Subsequent transfers.
28:6–111. Limitation of actions and levies.

§ 28:6–101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 28:9–109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 28:9–109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within the District are subject to this article. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–103. Transfers excepted from this article.

The following transfers are not subject to this article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in the District who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in the District an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–104. Schedule of property, list of creditors.

(1) Except as provided with respect to auction sales (section 28:6–108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the Recorder of Deeds of the District.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–105. Notice to creditors.

In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (section 28:6–108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 28:6–107). (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–106. (Omitted.)

§ 28:6–107. The notice.

(1) The notice to creditors (section 28:6–105) shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (section 28:6–104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 28:6–104) and to all other persons who are known to the transferee to hold or assert claims against the transferor. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–108. Auction sales; "auctioneer".

(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 28:6–104).

(3) The person or persons other than the transferor who direct, control or are responsible for the

auction are collectively called the "auctioneer" The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 28:6–104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–109. What creditors protected.

(1) The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 28:6–105 and 28:6–107) are not entitled to notice.

(2) (Omitted.) (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–110. Subsequent transfers.

When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

(Dec. 30, 1963, 77 Stat. 717, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:6–111. Limitation of actions and levies.

No action under this article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. (Dec. 30, 1963, 77 Stat. 717, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Article 7.—WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Part 1.—General

Sec.
28:7–101. Short title.
28:7–102. Definitions and index of definitions.
27:7–103. Relation of article to treaty, statute, tariff, classification or regulation.
28:7–104. Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.
28:7–105. Construction against negative implication.

Part 2.—Warehouse Receipts: Special Provisions

Sec.
28:7–201. Who may issue a warehouse receipt; storage under government bond.
28:7–202. Form of warehouse receipt; essential terms; optional terms.
28:7–203. Liability for non-receipt or misdescription.
28:7–204. Duty of care; contractual limitation of warehouseman's liability.
28:7–205. Title under warehouse receipt defeated in certain cases.
28:7–206. Termination of storage at warehouseman's option.
28:7–207. Goods must be kept separate; fungible goods.
28:7–208. Altered warehouse receipts.
28:7 209. Lien of warehouseman.
28:7–210. Enforcement of warehouseman's lien.

Part 3.—Bills of Lading: Special Provisions

28:7–301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.
28:7–302. Through bills of lading and similar documents.
28:7–303. Diversion; reconsignment; change of instructions.
28:7–304. Bills of lading in a set.
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28:7–307. Lien of carrier.
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28:7–309. Duty of care; contractual limitation of carrier's liability.

Part 4.—Warehouse Receipts and Bills of Lading: General Obligations

28:7–401. Irregularities in issue or receipt or bill or conduct of issuer.
28:7–402. Duplicate receipt or bill; overissue.
28:7–403. Obligation of warehouseman or carrier to deliver; excuse.
28:7–404. No liability for good faith delivery pursuant to receipt or bill.

Part 5.—Warehouse Receipts and Bills of Lading: Negotiation and Transfer

28:7–501. Form of negotiation and requirements of "due negotiation".
28:7–502. Rights acquired by due negotiation.
28:7–503. Document of title to goods defeated in certain cases.
28:7–504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.
28:7–505. Indorser not a guarantor for other parties.
28:7–506. Delivery without indorsement: right to compel indorsement.
28:7–507. Warranties on negotiation or transfer of receipt or bill.
28:7–508. Warranties of collecting bank as to documents.
28:7–509. Receipt or bill: when adequate compliance with commercial contract.

Part 6.—Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

28:7–601. Lost and missing documents.
28:7–602. Attachment of goods covered by a negotiable document.
28:7–603. Conflicting claims; interpleader.

Part 1.—General

§ 28:7–101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Documents of Title. (Dec. 30, 1963, 77 Stat. 718, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–102. Definitions and index of definitions.

(1) In this article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in article 1 (section 28:1–201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent of employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duty negotiate" section 28:7–501.

"Person entitled under the document" section 28:7–403(4).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Contract for sale" section 28:2–106.

"Overseas" section 28:2–323.

"Receipt" of goods section 28:2–103.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 718, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–103. Relation of article to treaty, statute, tariff, classification or regulation.

To the extent that any treaty or statute of the United States, regulatory statute of the District or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–104. Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.

(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–105. Construction against negative implication.

The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

PART 2.—WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

§ 28:7–201. Who may issue a warehouse receipt; storage under government bond.

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–202. Form of warehouse receipt; essential terms; optional terms.

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 28:7–209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this subtitle and do not impair his obligation of delivery (section 28:7-403) or his duty of care (section 28:7-204). Any contrary provisions shall be ineffective. (Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-203. Liability for non-receipt or misdescription.

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. (Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-241, § 1, eff. Jan. 1, 1965.)

§ 28:7-204. Duty of care; contractual limitation of warehouseman's liability.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable: *Provided, however,* That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) (Omitted.) (Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-205. Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the buisiness of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-206. Termination of storage at warehouseman's option.

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 28:7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-207. Goods must be kept separate; fungible goods.

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-208. Altered warehouse receipts.

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority,

may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. (Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-209. Lien of warehouseman.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 28:7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. (Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:7-210. Enforcement of warehouseman's lien.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisment of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. (Dec. 30, 1963, 77 Stat. 722, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

PART 3.—BILLS OF LADING: SPECIAL PROVISIONS

§ 28:7-301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may be inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. (Dec. 30, 1963, 77 Stat. 723, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-302. Through bills of lading and similar documents.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. (Dec. 30, 1963, 77 Stat. 724, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-303. Diversion; reconsignment; change of instructions.

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. (Dec. 30, 1963, 77 Stat. 724, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

28:7-304. Bills of lading in a set.

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

28:7–305. Destination bills.

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–307. Lien of carrier.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. (Dec. 30, 1963, 77 Stat. 725, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–308. Enforcement of carrier's lien.

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 28:7–210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. (Dec. 30, 1963, 77 Stat. 726, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–309. Duty of care; contractual limitation of carrier's liability.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or

change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. (Dec. 30, 1963, 77 Stat. 726, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 4.—Warehouse Receipts and Bills of Lading: General Obligations

§ 28:7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-402. Duplicate receipt or bill; overissue.

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-403. Obligation of warehouseman or carrier to deliver; excuse.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 28:2–705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this article (section 28:7–303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges air paid.

(3) Unless the person claiming is one against whom the document confers no right under section 28:7–503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. (Dec. 30, 1963, 77 Stat. 727, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-404. No liability for good faith delivery pursuant to receipt or bill.

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 5.—Warehouse Receipts and Bills of Lading: Negotiation and Transfer

§ 28:7-501. Form of negotiation and requirements of "due negotiation".

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim

to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–502. Rights acquired by due negotiation.

(1) Subject to the following section and to the provisions of section 28:7–205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. (Dec. 30, 1963, 77 Stat. 728, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–503. Document of title to goods defeated in certain cases.

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 28:7–403) or with power of disposition under this subtitle (sections 28:2–403 and 28:9–307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article, pursuant to its own bill of lading discharges the carrier's obligation to deliver. (Dec. 30, 1963, 77 Stat. 729, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under section 28:2–402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under section 28:2–705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. (Dec. 30, 1963, 77 Stat. 729, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–505. Indorser not a guarantor for other parties.

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–506. Delivery without indorsement: right to compel indorsement.

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7–507. Warranties on negotiations or transfer of receipt or bill.

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then

unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-508. Warranties of collecting bank as to documents.

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-509. Receipt or bill: when adequate compliance with commercial contract.

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (article 2) and on letters of credit (article 5). (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 6.—Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

§ 28:7-601. Lost and missing documents.

(1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. (Dec. 30, 1963, 77 Stat. 730, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-602. Attachment of goods covered by a negotiable document.

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. (Dec. 30, 1963, 77 Stat. 731, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:7-603. Conflicting claims; interpleader.

If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, which ever is appropriate. (Dec. 30, 1963, 77 Stat. 731, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Article 8.—INVESTMENT SECURITIES

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PART 1.—SHORT TITLE AND GENERAL MATTERS

§ 28:8–101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Investment Securities. (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88–243, § 1.)

§ 28:8–102. Definitions and index of definitions.

(1) In this article unless the context otherwise requires

(a) A "security" is an instrument which

(i) is issued in bearer or registered form; and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that article. This article does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

"Adverse claim". Section 28:8–301.

"Bona fide purchaser". Section 28:8–302.

"Broker". Section 28:8–303.

"Guarantee of the signature". Section 28:8–402.

"Intermediary bank". Section 28:4–105.

"Issuer". Section 28:8–201.

"Overissue". Section 28:8–104.

(6) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–103. Issuer's lien.

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88–243, §1, eff. Jan. 1, 1965.)

§ 28:8–104. Effect of overissue; "overissue".

(1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–105. Securities negotiable; presumptions.

(1) Securities governed by this article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 28: 8–202).

(Dec. 30, 1963, 77 Stat. 733, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–106. Applicability.

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–107. Securities deliverable; action for price.

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sales the seller may recover the price

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

(Dec. 30, 1963, 77 Stat. 733, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

PART 2.—ISSUE—ISSUER

§ 28:8–201. "Issuer".

(1) With respect to obligations on or defenses to a security "issuer" includes a person who

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (part 4 of this article) "issuer" means a person on whose behalf transfer books are maintained. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–202. Issuer's responsibility and defenses; notice of defect or defense.

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2)(a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (section 28:8–205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–203. Staleness as notice of defects or defenses.

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1). (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–204. Effect of issuer's restrictions on transfer.

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–205. Effect of unauthorized signature on issue.

An unauthorized signature placed on a security prior to or in the course of issue is ineffective that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

(Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-206. Completion or alteration of instrument.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-207. Rights of issuer with respect to registered owners.

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-208. Effect of signature of authenticating trustee, registrar or transfer agent.

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) the security is genuine; and

(b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Part 3.—Purchase

§ 28:8-301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-302. "Bona fide purchaser".

A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-303. "Broker".

"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-304. Notice to purchaser of adverse claims.

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-305. Staleness as notice of adverse claims.

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

(Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-306. Warranties on presentment and transfer.

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowlege of any unauthorized signature (section 28:8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledge or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-307. Effect of delivery without indorsement; right to compel indorsement.

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified as described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this article. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-309. Effect of indorsement without delivery.

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-310. Indorsement of security in bearer form.

An indorsement of a security in bearer form may give notice of adverse claims (section 28:8-304) but does not otherwise affect any right to registration the holder may possess. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8–311. Effect of unauthorized indorsement.

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 28:8–404).

(Dec. 30, 1963, 77 Stat. 739, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–312. Effect of guaranteeing signature or indorsement.

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (section 28:8–308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–313. When delivery to the purchaser occurs; purchaser's broker as holder.

(1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under section 28:8–320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–314. Duty to deliver, when completed.

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgement to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1). (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–315. Action against purchaser based upon wrongful transfer.

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this article on unauthorized indorsements (section 28:8–311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–316. Purchaser's right to requisites for registration of transfer on books.

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the

purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–317. Attachment or levy upon security.

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–318. No conversion by good faith delivery.

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of the principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–319. Statute of frauds.

A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

(Dec. 30, 1963, 77 Stat. 741, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–320. Transfer or pledge within a central depository system.

(1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 28:8–301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 28:9–304 and 28:9–305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 4.—Registration

§ 28:8–401. Duty of issuer to register transfer.

(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) the security is indorsed by the appropriate person or persons (section 28:8–308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (section 28:8–402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 28:8–403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the

person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–402. Assurance that indorsements are effective.

(1) The issuer may require the following assurance that each necessary indorsement (section 28:8–308) is genuine and effective

(a) in all cases, a guarantee of the signature (subsection (1) of section 28:8–312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection 3(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8–403. Limited duty of inquiry.

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 28:8–402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 28:8–402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

(Dec. 30, 1963, 77 Stat. 743, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:8-404. Liability and non-liability for registration.

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (section 28:8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (section 28:8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by section 28:8-104.

(Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-405. Lost, destroyed and stolen securities.

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 28:8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-406. Duty of authenticating trustee, transfer agent or registrar.

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:8-407. Limitation of actions.

(1) In the event of registration, either before or after this subtitle becomes effective, of a transfer or purported transfer of a security to a person not entitled to it, no action of any kind, legal or equitable, to compel the issue, reissue or delivery of a like security or to obtain damages or any other relief as a result of or in connection with such registration may be brought, subject to subsection (2), by the true owner or any other person against an issuer, authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities, more than eight years after the date on which such registration to a person not entitled has taken place.

(2) The time limitations in subsections (1) and (3) of this section may not be tolled or suspended for any reason. This section is additional to, and does not prevent or affect the application of, any other statute of limitations as a defense to any action. This section applies to claims or causes of action which have accrued before this subtitle becomes effective as well as to those which accrue after this subtitle becomes effective. This section does not apply to any action against an issuer which at the time of such registration has fewer than fifty persons registered upon books maintained for that purpose as holders of the class and series, if any, of the security so registered to the person not entitled to it.

(3) If the eight year period specified in this section expires prior to one year after the effective date of this subtitle, such period is extended to one year after such effective date. (Dec. 30, 1963, 77 Stat. 745, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

Article 9.—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

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Part 1.—Short Title, Applicability and Definitions

§ 28:9–101. Short title.

This article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. (Dec. 30, 1963, 77 Stat. 746, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–102. Policy and scope of article.

(1) Except as otherwise provided in section 28:9–103 on multiple state transactions and in section 28:9–104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of the District

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 28:9–310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply. (Dec. 30, 1963, 77 Stat. 746, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.

(1) If the office where the assignor of accounts or contract rights keep his records concerning them is in the District, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in the District, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the

like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in the District. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into the District, the validity of the security interest in the District is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in the District and it was brought into the District within 30 days after the security interest attached for purposes other than transportation through the District, then the validity of the security interest in the District is to be determined by the law of the District. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the District, the security interest continues perfected in the District for four months and also thereafter if within the four month period it is perfected in the District. The security interest may also be perfected in the District after the expiration of the four month period; in such case perfection dates from the time of perfection in the District. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into the District, it may be perfected in the District; in such case perfection dates from the time of perfection in the District.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of the District or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and section 28:9-302, if the office where the assignor of accounts or contracts rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of the District or the transaction which creates the security interest otherwise bears an appropriate relation to the District, this article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor. (Dec. 30, 1963, 77 Stat. 747, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:9-104. Transactions excluded from article.

This article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 28:9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in section 28:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

(Dec. 30, 1963, 77 Stat. 748, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:9-105. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing

with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of article 1 (section 28:1–201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 28:9–313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in section 28:3–104), or a security (defined in section 28:8–102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account". Section 28:9–106.
"Consumer goods". Section 28:9–109(1).
"Contract right". Section 28:9–196.
"Equipment". Section 28:9–109(2).
"Farm products". Section 28:9–109(3).
"Filing Office". Section 28:9–401(1).
"General intangibles". Section 28:9–106.
"Inventory". Section 28:9–109(4).
"Lien creditor". Section 28:9–301(3).
"Proceeds". Section 28:9–306(1).
"Purchase money security interest". Section 28:9–107.

(3) The following definitions in other articles apply to this article:

"Check". Section 28:3–104.
"Contract for sale". Section 28:2–106.
"Holder in due course". Section 28:3–302.
"Note". Section 28:3–104.
"Sale". Section 28:2–106.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 748, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–106. Definitions: "account"; "contract right"; "general intangibles".

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–107. Definitions: "purchase money security interest".

A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

(Dec. 30, 1963, 77 Stat. 750, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–108. When after-acquired collateral not security for antecedent debt.

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–109. Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory".

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–110. Sufficiency of description.

For the purposes of this article any description of personal property or real estate is sufficient

whether or not it is specific if it reasonably identifies what is described. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–111. Applicability of bulk transfer laws.

The creation of a security interest is not a bulk transfer under article 6 (see section 28:6–103). (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–112. Where collateral is not owned by debtor.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 28:9–502(2) or under section 28:9–504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor.

(a) to receive statements under section 28:9–208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 28:9–505;

(c) to redeem the collateral under section 28:9–506;

(d) to obtain injunctive or other relief under section 28:9–507(1); and

(e) to recover losses caused to him under section 28:9–208(2).

(Dec. 30, 1963, 77 Stat. 751, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–113. Security interests arising under article on sales.

A security interest arising solely under the article on sales (article 2) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the article on sales (article 2).

(Dec. 30, 1963, 77 Stat. 751, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 2.—Validity of Security Agreement and Rights of Parties Thereto

§ 28:9–201. General validity of security agreement.

Except as otherwise provided by this title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–202. Title to collateral immaterial.

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–203. Enforceability of security interest; proceeds, formal requisites.

(1) Subject to the provisions of section 28:4–208 on the security interest of a collecting bank and section 28:9–113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this article, is also subject to chapter 20 of Title 2, relating to pawnbrokers, chapter 6 of Title 26, relating to money lenders, chapter 7 of Title 40, relating to liens on motor vehicles, and chapter 9 of Title 40, relating to installment sales of motor vehicles, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. (Dec. 30, 1963, 77 Stat. 751, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–204. When security interest attaches; after-acquired property; future advances.

(1) A security interest cannot attach until there is agreement (subsection (3) of section 28:1–201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (section 28:9–314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–205. Use or disposition of collateral without accounting permissible.

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. (Dec. 30, 1963, 77 Stat. 752, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–207. Rights and duties when collateral is in secured party's possession.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. (Dec. 30, 1963, 77 Stat. 753, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–208. Request for statement of account or list of collateral.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. may require payment of a charge not exceeding $10 for each additional statement furnished. (Dec. 30, 1963, 77 Stat. 753, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

PART 3.—RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 28:9–301. Persons who take priority over unperfected security interests; "lien creditor".

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under section 28:9–312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest. (Dec. 30, 1963, 77 Stat. 754, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 28:9–305;

(b) a security interest temporarily perfected in instruments or documents without delivery under section 28:9–304 or in proceeds for a 10 day period under section 28:9–306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under section 28:9–313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 28:9–313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (section 28:4–208) or arising under the article on sales (see section 28:9–113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this article do not apply to a security interest properly subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of the United States pertaining to the District which provides for central filing of security interests in a motor vehicle or trailer which is not inventory held for sale for which a certificate of title is required to be issued under the provisions of chapter 7 of Title 40.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official. (Dec. 30, 1963, 77 Stat. 754, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–303. When security interest is perfected; continuity of perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 28:9–302, 28:9–304, 28:9–305, and 28:9–306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article. (Dec. 30, 1963, 77 Stat. 755, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and

any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article. (Dec. 30, 1963, 77 Stat. 755, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–305. When possession by secured party perfects security interest without filing.

A security interest in letters of credit and advices of credit (subsection (2)(a) of section 28:5–116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party. (Dec. 30, 1963, 77 Stat. 756, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–306. "Proceeds"; secured party's rights on disposition of collateral.

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds" All other proceeds are "non-cash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest.

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 28.9–308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

(Dec. 30, 1963, 77 Stat. 756, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–307. Protection of buyers of goods.

(1) A buyer in ordinary course of business (subsection (9) of section 28:1–201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2,500 (other than fixtures, see section 28:9–313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods. (Dec. 30, 1963, 77 Stat. 757, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–308. Purchase of chattel paper and non-negotiable instruments.

A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under section 28:9–304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 28:9–306), even though he knows that the specific paper is subject to the security interest. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–309. Protection of purchasers of instruments and documents.

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 28:3–302) or a holder to whom a negotiable document of title has been duly negotiated (section 28:7–501) or a bona fide purchased of a security (section 28:8–301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–310. Priority of certain liens arising by operation of law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–311. Alienability of debtor's rights: judicial process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in the following sections shall govern where applicable: section 28:4–208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 28:9–301 on certain priorities; section 28:9–304 on goods covered by documents; section 28:9–306 on proceeds and repossessions; section 28:9–307 on buyers of goods; section 28:9–308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; section 28:9–309 on security interests in negotiable instruments, documents or securities; section 28:9–310 on priorities between perfected security interests and liens by operation of law; section 28:9–313 on security interests in fixtures as against interests in real estate; section 28:9–314 on security interests in accessions as against interest in goods; section 28:9–315 on conflicting security interests where goods lose their identity or become part of a product; and section 28:9–316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives posses-

sion of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under section 28:9–204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under section 28:9–204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under section 28:9–204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–313. Priority of security interests in fixtures.

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this article unless the structure remains personal property under applicable law. The law of the District other than this subtitle determines whether and when other goods becomes fixtures. This subtitle does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interests or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. (Dec. 30, 1963, 77 Stat. 759, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods taxes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 28:9–315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than

the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. (Dec. 30, 1963, 77 Stat. 760, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–315. Priority when goods are commingled or processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the productor mass if

(a) the goods are so manufactured, processed, assembled, or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 28:9–314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–316. Priority subject to subordination.

Nothing in this article prevents subordination by agreement by any person entitled to priority. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–317. Secured party not obligated on contract of debtor.

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 28:9–206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective. (Dec. 30, 1963, 77 Stat. 761, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Part 4.—Filing

§ 28:9–401. Place of filing; erroneous filing; removal of collateral.

(1) The proper place to file in order to perfect a security interest is, in all cases, in the office of the Recorder of Deeds of the District. In this article, "filing officer" means said Recorder.

(2) A filing which is made in good faith in an improper place is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into the District from another jurisdiction, the rules stated in section 28:9–103 determine whether filing is necessary in the District. (Dec. 30, 1963, 77 Stat. 762, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–402. Formal requisites of financing statement; amendments.

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which informa-

tion concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into the District. Such a financing statement must state that the collateral was brought into the District under such circumstances.

(b) proceeds under section 28:9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)_____
Address_____
Name of secured party (or assignee)_____
Address_____

1. This financing statement covers the following (or items) of property:

(Describe)_____

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate)_____

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate)_____

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor)_____
Signature of Secured Party (or Assignee)_____

(4) The term "financing statement" as used in this article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. (Dec. 30, 1963, 77 Stat. 762, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be $2.00. (Dec. 30, 1963, 77 Stat. 763, Pub. L. 88-243, § 1, eff. Jan. 1, 1965.)

§ 28:9-404. Termination statement.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be $2.00. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $2.00. (Dec. 30, 1963, 77 Stat. 764, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9-405. Assignment of security interest; duties of filing officer; fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 28:9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be $2.00.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $2.00.

(3) After the disclosure of filing of an assignment under this section, the assignee is the secured party of record. (Dec. 30, 1963, 77 Stat. 764, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9-406. Release of collateral; duties of filing officer; fees.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall attach the statement of release to the instrument to which it relates and shall enter on the released instrument and on the index record thereof the word "released", the date of filing of the statement of release, and a facsimile of his signature. The uniform fee for filing and noting such a statement of release shall be $2.00. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9-407. Information from filing officer.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be $1.00 plus $0.50 for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing, continuation or termination statement or statement of assignment or release for a uniform fee of $3.00 for the first two pages or less, and $1.00 for each additional page, plus $0.50 for certification. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

PART 5.—DEFAULT

§ 28:9-501. Default; procedure when security agreement covers both real and personal property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 28:9–207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 28:9–207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 28:9–505) and with respect to redemption of collateral (section 28:9–506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 28:9–502 and subsection (2) of section 28:9–504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 28:9–504 and subsection (1) of section 28:9–505 which deal with disposition of collateral;

(c) subsection (2) of section 28:9–505 which deals with acceptance of collateral as discharge of obligation;

(d) section 28:9–506 which deals with redemption of collateral; and

(e) subsection (1) of section 28:9–507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article. (Dec. 30, 1963, 77 Stat. 765, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–502. Collection rights of secured party.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 28:9–306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–503. Secured party's right to take possession after default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable. and may dispose of collateral on the debtor's premises under section 28:9–504. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–504. Secured party's right to dispose of collateral after default; effect of disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the District or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is

made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article. (Dec. 30, 1963, 77 Stat. 766, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 28:9–504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 28:9–507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the District or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under section 28:9–504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–506. Debtor's right to redeem collateral.

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 28:9–504 or before the obligation has been discharged under section 28:9–505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:9–507. Secured party's liability for failure to comply with this part.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. (Dec. 30, 1963, 77 Stat. 768, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

Article 10.—CONSTRUCTION WITH OTHER LAWS

Sec.
28:10–101. (Omitted.)
28:10–102. (Omitted.)
28:10–103. Inconsistent laws; what law governs.
28:10–104. Laws not repealed.

§ 28:10–101. (Omitted.)

§ 28:10–102. (Omitted.)

§ 28:10–103. Inconsistent laws; what law governs.

Except as provided by section 28:10–104, if any provision of law is inconsistent with this subtitle, this subtitle shall govern, unless this subtitle or the inconsistent provision of the other law specifically provides otherwise. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88–243, § 1, eff. Jan. 1, 1965.)

§ 28:10–104. Laws not repealed.

(1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 28:1–201).

(2) This subtitle does not supersede or modify the District of Columbia Uniform Act for Simplification of Fiduciary Security Transfers, approved July 5, 1960 (74 Stat. 322), being all of subchapter II of chapter 23 of Title 28 of the District of Columbia Code, 1961 edition, and if in any respect there is any inconsistency between that Act and article 8 of this subtitle relating to investment securities, the provisions of that Act, rather than article 8, control. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88–243, § 1.)

SUBTITLE II.—OTHER COMMERCIAL TRANSACTIONS

Subtitle II.—Other Commercial Transactions, consisting of chapters 21 to 35 inclusive, was enacted into law by Pub. L. 88–509, 78 Stat. 667, § 1, Aug. 30, 1964, effective Jan. 1, 1965

Chap.		Sec.
21.	Assignment for Benefit of Creditors	28–2101
23.	Assignment of Choses in Action	28–2301
25.	Bonds and Undertakings	28–2501
27.	Business Holidays and Computation of Time	28–2701
29.	Fiduciary Security Transfers	28–2901
31.	Fraudulent Conveyances	28–3101
33.	Interest and Usury	28–3301
35.	Statute of Frauds	28–3501

TABLE SHOWING WHERE SECTIONS OF THE DISTRICT OF COLUMBIA CODE, 1961 EDITION, WILL BE FOUND IN SUBTITLE II OF TITLE 28

1961 ed.	*Rev. Title 28*	*1961 ed.*	*Rev. Title 28*
28–616	28–2701.	28–2605	28–2106.
28–2321	28–2901.	28–2606	28–2107.
28–2322	28–2902.	28–2607	28–2108.
28–2323	28–2903.	28–2608	28–2109.
28–2324	28–2904.	28–2609	28–2110.
28–2325	28–2905.	28–2610	28–2102.
28–2326	28–2906.	28–2701	28–3302.
28–2327	28–2907.	28–2702	28–3301.
28–2328	28–2908.	28–2703	28–3303.
28–2329	28–2909.	28–2704	28–3304.
28–2330	Omitted.	28–2705	28–3305.
28–2401	28–2501.	28–2706	28–3306.
28–2402	28–2501.	28–2801	Omitted.
28–2405	28–2502.	28–2802	Omitted.
28–2406	28–2503.	28–2803	Omitted.
28–2407	28–2504.	28–2804	28–2711.
28–2501	28–2301.	28–3001	28–3501.
28–2502	28–2302.	28–3002	28–3502.
28–2503	28–2303.	28–3003	28–3503.
28–2504	28–2304.	28–3004	Rep. by Pub. L. 88–243.
28–2505	28–2305.		
28–2601	28–2101, 28–2102.	28–3005	28–3504.
		28–3006	28–3505.
28–2603	28–2103.	28–3101	28–3101.
28–2603	28–2104.	28–3102	28–3102.
28–2604	28–2105.	28–3103	28–3103.

TRANSFERRED SECTIONS

Showing sections of Title 28, D.C. Code, 1961, ed., transferred to other parts of the Code

Section:	Transferred to:
28–2101 to 28–2106	22–3701 to 22–3706.
28–2301 to 28–2314	Title 21, chap. 6.
28–2403	16–601.
28–2404	15–111.
28–2707 to 28–2709	15–108 to 15–110.

ENACTING CLAUSE

Section 1 of act Aug. 30, 1964, Pub. L. 88–509, 78 Stat. 667 provided in part: "That the general and permanent laws of the District of Columbia, relating to commercial instruments and transactions, not embraced in 'Subtitle I—Uniform Commercial Code" of title 28, District of Columbia Code, which was enacted by Public Law 88–243, are revised, codified, and enacted as 'Subtitle II—Other Commercial Transactions', of title 28, and may be cited as 'D.C. Code, § ——', as follows:"

EFFECTIVE DATE

Section 7 of act Aug. 30, 1964, Pub. L. 88–509, 78 Stat. 679, provided: "This Act takes effect on January 1, 1965."

APPROPRIATIONS

Section 6 of act Aug. 30, 1964, Pub. L. 88–509, 78 Stat. 679, provided: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of subtitle II of title 28, District of Columbia Code, as set out in section 1 of this Act." [Chapters 21 to 35.]

BRITISH STATUTES OMITTED

Section 8(a) of act Aug. 30, 1964, Pub. L. 88–509, 78 Stat. 679, provided: "The following British statutes, deemed to have been in force in the District of Columbia by virtue of the Act of Mar. 1, 1901, ch. 854, sec. 1, have no further force, as such, in the District:

"21 Henry III (1236), Alex. Brit. Stat., p. 36, D.C. Code, 1961 ed., § 28–2803;

"24 Geo. II, ch. 23, §§ 1, 2 (1751), Alex. Brit. Stat., pp. 768–770, D.C. Code, 1961 ed., §§ 28–2801, 28–2802."

REPEAL AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 8(b) of act Aug. 30, 1964, Pub. L. 88–509, 78 Stat. 679, provided: "The sections of the Acts or parts of Acts, enumerated in the schedule below, are repeated. Any rights or liabilities existing under the sections so repealed, and any cases or proceedings instituted under, or growing out of them, are not affected by the repeal. However, laws becoming effective after June 1, 1964, and inconsistent with this Act, supersede it to the extent of the inconsistency." [The "schedule below" referred to in text is set out as a part of Pub. L. 88–509.]

Chapter 21.—ASSIGNMENT FOR BENEFIT OF CREDITORS

Sec.
28–2101. Form of assignment.
28–2102. Extent of assignment—Assets exempt.
28–2103. Assignee.
28–2104. Bond of assignee.
28–2105. Nonperformance by assignee—Trustee.
28–2106. Duties of assignee.
28–2107. Preferences prohibited.
28–2108. Proceedings for benefit of all creditors.
28–2109. Assignment to hinder or defraud creditors.
28–2110. Notice to creditors.

§ 28–2101. Form of assignment.

In a voluntary assignment for the benefit of creditors, the debtor shall annex to the assignment (1) an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, (2) a list of his creditors, their respective residences and places of business, if known, and (3) the amounts of their respective demands. (Aug. 30, 1964, 78 Stat. 667, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2601 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 435).

Section is based on first clause of section 28–2601, the balance of that section being consolidated with section 28–2610, as section 28–2102 of this revision.

Changes are made in phraseology.

CROSS REFERENCE

Exemption generally, see § 15–501 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Decisions under prior law

All parts of a deed of assignment for the benefit of creditors will be considered in arriving at the general intention of the instrument, and if consistent with the language two constructions can be given, that is to be adopted which will render it legal and operative rather than illegal and void. *Cissell* v. *Johnston* (4 App. D.C. 335).

An attempt to limit the benefit of the trust to such creditors only as shall release their demands if not paid in full is a preference within the meaning of act Feb. 24, 1893, 27 Stat. 474, and void, and all liabilities within the provisions of the assignment shall be paid pro rata from the assets thereof. *Id.*

Assignment by debtor to a creditor of a fund due him under a contract with District of Columbia for erection of school buildings, with directions to the assignee after paying his own claim, to distribute the residue among certain other creditors, passes the legal title to the fund and creates a trust for creditors named although at the time some of them had no knowledge of the transaction and did not assent to it. *Smith* v. *Herrell* (11 App. D.C. 425).

Confession of judgment by an insolvent debtor in favor of a bona fide creditor is not such a preference as is prohibited by act Feb. 24, 1893, 27 Stat. 474, § 2, declaring void preferences of one creditor over another. *Strasburger* v. *Dodge* (12 App. D.C. 37).

Under laws of Maryland the general words of an assignment for benefit of creditors are restricted by particular description of a schedule which is made part of it; and where such assignment executed in Washington, D.C., purports to convey a life estate of the assignor in lands in Maryland as expressed in schedule, the assignee will take only such life estate, although assignment purports to convey all of assignor's property. *Keane* v. *Chamberlain* (14 App. D.C. 84).

§ 28–2102. Extent of assignment—Assets exempt.

An assignment vests in the assignee the title to all property, except what is legally exempt, belonging to the debtor at the time of making the assignment and comprehended within its general terms. The inventory annexed to an assignment is not conclusive as to the amount of the debtor's estate.

An assignment for the benefit of creditors does not include or cover property exempt from levy or sale on execution unless the exemption is expressly waived. The court may direct the manner in which exempt property may be ascertained and set aside before a sale by a trustee. (Aug. 30, 1964, 78 Stat. 667, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 28–2601, 28–2610 (Mar. 3, 1901, 31 Stat. 1256, 1258, ch. 854, §§ 435, 444).

Section is based on last clause of section 28–2601 and all of section 28–2610. The first clause of section 28–2601 is set out as section 28–2101 of this revision.

Changes are made in phraseology.

§ 28–2103. Assignee.

Only a resident of the District of Columbia may be an assignee in an assignment for the benefit of creditors. His asset shall appear in writing in, or at the end of, or indorsed on, the assignment. An assignment is invalid unless acknowledged and recorded within five days after its execution in the land records of the District. A trust created by an assignment shall be executed under the supervision and control of the United States District Court for the District of Columbia. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2602 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 436; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction of municipal court 1
Right to maintain action 2
Validity of deed of trust 3

1. Jurisdiction of municipal court

Where dispute between judgment creditor and garnishee involved much less than $3,000 jurisdiction of Municipal Court for District of Columbia, Civil Division, such court had jurisdiction to decide that there were funds in garnishee's hands which should be subjected to payment of judgment, and in so deciding such court was not administering or supervising a trust which should have been under supervision and control of United States District Court and which was in an amount far in excess of such $3,000 jurisdictional amount, notwithstanding that garnishee, in acquiring assets and funds of judgment debtor, may have acted as trustee for benefit of creditors in transactions totalling some $35,000. *Pinkston* v. *Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

2. Right to maintain action

Assignment is admissible in evidence in a suit by the assignee to show his right to maintain the action. *Mazza* v. *Russell* (47 App. D. C. 87).

3. Validity of deed of trust

Where deed of trust conveying assets of company was not recorded within five days from date of execution as required by this section, company had its principal place of business in District of Columbia but trustee was not resident of district as required, deed reserved surplus for benefit of company's stockholders, no creditors were named therein, deed authorized trustee to operate business as far as seemed practicable to trustee and person who executed deed as secretary for company had not held that office or any other office for some eight months, deed was invalid and did not create a lien or right superior to that of attaching judgment creditor, and claim of trustee to commission must yield to claim of judgment creditor. *Pinkston* v. *Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

§ 28–2104. Bond of assignee.

Immediately upon the filing for record of an assignment for the benefit of creditors, the assignee shall execute and file in the clerk's office of the United States District Court for the District of Columbia his bond to the United States, in an amount and with security to be approved by a judge thereof, conditioned for the faithful performance of his duties according to law, and the court may from time to time require the assignee, or a trustee appointed in his place, to give additional security when required by the interests of the creditors. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2603 (Mar 3, 1901, 31 Stat. 1257, ch. 854, § 437; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

The reference to "the justice holding the equity court" is changed to read "a judge thereof" inasmuch as the distinction between law and equity has been abolished.

Minor changes are made in phraseology.

§ 28–2105. Non-performance by assignee—Trustee.

If an assignee named in an assignment for the benefit of creditors fails or refuses to comply with any of the requirements of sections 21–2103 and 21–2104, a judge of the District Court may, on the application of the assignor or a creditor interested in the assignment, remove the assignee and appoint a trustee in his place to execute the trusts created by the assignment, who shall give bond as the court may require. And the court may accept the resignation of an assignee or trustee, and in case of his resignation, death, or removal from the District, appoint a trustee in his place. The court, for cause shown, on the application of an interested person, may remove an assignee or trustee and appoint a trustee in his place, and make and enforce all orders necessary to put the newly appointed trustee in possession of all property covered by the assignment. Upon the death of an assignee or trustee the court may require his executor or administrator to settle his account and to deliver over to his successor all property belonging to the trust, in default of which the successor may bring suit upon the bond of the deceased assignee or trustee or upon the bond of the executor or administrator, accordingly as the assignee or trustee, executor or administrator is the party in default. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2604 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 438; June 30, 1902, 32 Stat. 530, ch. 1329).

The reference to "the justice holding the equity court" has been changed to read "a judge of the District Court" inasmuch as the distinction between law and equity has been abolished. The words "moneys, books, papers and other effects" following "property" are deleted as redundant and surplusage.

Changes are made in phraseology.

§ 28–2106. Duties of assignee.

An assignee or trustee, after giving bond, shall collect and take into his possession all the property covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. The court may require the assignor to be examined under oath touching his property, and may make all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The assignee or trustee shall return inventories of the assets coming to his hands and, upon the direction of the court, sell and dispose of them; and his conveyance of any property of the assignor, real or personal, transfers the entire title of the assignor therein to the purchaser. When the assets have been converted into money the assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in creditor's suits. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2605 (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 439).

The reference to proceedings "in equity" is deleted in the last sentence inasmuch as the distinction between law and equity has been abolished.

Changes are made in phraseology.

§ 28–2107. Preferences prohibited.

A provision in a voluntary assignment made for the payment of one debt or liability in preference to another is void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets. This section does not affect the priority of liens and incumbrances created bona fide and existing before the execution of the assignment. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2606 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 440).

Changes are made in phraseology.

§ 28–2108. Proceedings for benefit of all creditors.

A proceeding instituted under this chapter by one or more creditors is deemed to be for the equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be distributed, or expenses, including counsel fees, as may be just and equitable. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2607 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 441).

§ 28–2109. Assignment to hinder or defraud creditors.

This chapter does not prevent a creditor otherwise entitled from attacking an assignment as made to hinder or defraud the creditors of the assignor. When the court finds an assignment to have been made with that intent, it may enjoin any proceeding thereunder, and upon finally decreeing the assignment to be void may appoint a trustee with power to take possession of all the property of the debtor, and may make and enforce all orders necessary to put him in possession of the property. The trustee shall qualify in the same manner and perform the same duties as the trustees provided for by this chapter. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2608 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 442).

Changes are made in phraseology.

Cross Reference

Fraudulent conveyances, generally, see § 28–3101 et. seq.

§ 28–2110. Notice to creditors.

The court shall require a trustee, whether named in the assignment or appointed by the court, in pursuance of this chapter, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2609 (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 443).

Changes are made in phraseology.

Chapter 23.—ASSIGNMENT OF CHOSES IN ACTION

Sec.
28–2301. Assignment of judgment or money decree.
28–2302. Assignment of bond or obligation.
28–2303. Assignment of nonnegotiable contract.
28–2304. General assignments including choses in action.
28–2305. Contract to assign future salary or wages.

§ 28–2301. Assignment of judgment or money decree.

A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out an execution on the judgment in his own name, as the original plaintiff might have done. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2501 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 431).

The reference to "a scire facias" is deleted as obsolete under the Federal Rules of Civil Procedure.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attorneys' equitable lien 1
Decree for alimony 2
Judgment improperly entered 3

1. Attorneys' equitable lien

The interest in client's judgment of attorneys created by contingent fee contract was not equivalent to an assignment of a cause of action and resulting judgment, but rather attorneys' interest was like an equitable lien, and, hence, attorneys, in seeking to enforce collection of the judgment for benefit of client and themselves upon refusal of client to do so, was not required to observe provisions of statute relating to assignment of judgments. *Falcone and Millstein* v. *Hall et al.* (1256, 235 F. 2d 860, 98 U.S. App. D.C. 363).

2. Decree for alimony

"A decree ordering the payment of a periodical allowance of alimony in the future is not assignable," although accrued alimony (under an order which it was beyond the power of the court in its discretion to modify or vacate) may be assigned. *Lynham* v. *Hufty* (44 App. D. C. 589).

3. Judgment improperly entered

Where the rules require that judgment shall not be entered for four days after verdict, a judgment improperly entered by the clerk within that time is not absolutely void, and may be assigned. *Hutchinson* v. *Brown* (8 App. D.C. 157).

§ 28–2302. Assignment of bond or obligation.

An obligee named in a bond or obligation under seal for the payment of money may assign it in writing and the assignee may maintain an action thereon in his own name (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2502 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 432).

A minor change is made in phraseology.

§ 28–2303. Assignment of nonnegotiable contract.

An owner of a nonnegotiable written agreement for the payment of money, including a nonnegotiable bill of exchange and a promissory note, or for the delivery of personal property, an open account, debt, and demand of a liquidated character, except a claim against the United States or the salary of a public officer, may assign it in writing, and the assignee may maintain an action thereon in his own name. (Aug. 30, 1964, 78 Stat. 669, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2503 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 433).

Changes are made in phraseology.

CROSS REFERENCES

Assignment of motor-vehicle lien, see §§ 40–708, 40–709.

Set-off of nonnegotiable debts, see § 13–502.

Teachers' retirement annuity may not be assigned, see § 31–718.

NOTES TO DECISIONS UNDER PRIOR LAW

Action by assignor after assignment 1
Indispensable party 2
Possessory action 3
Purpose 4
Real party in interest 5
Single cause of action 6
Stock certificates 7
Subscriptions to capital stock of corporation 8

1. Action by assignor after assignment

Evidence tending to prove that action was brought, not in the name of the assignee, or in the name of the assignor to the use of the assignee, but by the assignor after his assignment, was properly excluded where such defense had not been pleaded. *Pierce* v. *Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D.C. 156).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, corporation had no right to enforce such claim. *York Blouse Corp.* v. *Kaplowitz Bros.* (D.C. Mun. App. 1953, 97 A. 2d 465).

In action by corporation, which had sold its claim against defendant prior to bringing of action, for purchase price of certain merchandise, allegedly sold and delivered, request of corporation for leave to add as additional parties plaintiff the stockholders of corporation was properly denied. *Id.*

Where assignors assigned claims for the purpose of permitting assignee to manager the litigation and there was no evidence of fraud or any other circumstances which raised any questions as to assignee's legal title to the claims he was asserting, assignee had the right to maintain an action on the claims assigned in his own name. *Compton* v. *Atwell* (D.C. Mun. App. 1952, 86 A. 2d 623).

2. Indispensable party

When the rights of an assignee will be affected by an action, the assignee is an indispensable party. *York Blouse Corp.* v. *Kaplowitz Bros.* (D.C. Mun. App. 1953, 97 A. 2d 465).

3. Possessory action

Owners' agent for management of realty, who was made assignee of leases from agent for former owners, had a right to bring a possessory action against tenant in his own name under the right of an assignee of a nonnegotiable instrument to sue in his own name. *Koehne* v. *Harvey* (D.C. Mun. App. 1946, 45 A. 2d 780).

4. Purpose

Obvious purpose of this section was to vest in the assignee the right to sue in his own name. Since the procedural right had not been previously available to him, as the real party in interest, he is able to sue in the name of his assignor. *District of Columbia* v. *Hamilton National Bank* (D.C. Mun. App. 1950, 76 A. 2d 60).

5. Real party in interest

Where defendant owed four small accounts and three of his creditors made written assignment, purporting to be absolute, of their accounts to the fourth creditor, but the creditors had orally agreed that assignments were only for purpose of enabling one creditor to sue, action brought by assignee was within exception provided by Municipal Court Rules allowing a party to sue in his own name without joining party for whose benefit action was brought. *Compton* v. *Atwell* (1953, 207 F. 2d 139, 93 U.S. App. D.C. 99).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, assignee was the real party in interest and indispensable party. *York Blouse Corp.* v. *Kaplowitz Bros.* (D.C. Mun. App. 1953, 97 A. 2d 465).

When substantive law gives an assignee the right to sue in his own name and rule of court requires suit by the real party in interest, action on assigned claim must be brought by the assignee in his own name. *Id.*

6. Single cause of action

Creditor has no right to split up a single cause of action, either by the institution in his own name of separate suits upon separate fractions thereof, or by the assignment of such several parts to several persons without knowledge and consent of the debtor, so as to require the latter to respond to different actions and to incur accumulation. *Sincell* v. *Davis* (24 App. D.C. 218).

A single cause of action may be assigned, and the assignee may sue upon it in his own name, usually subject to all the equities existing between the assignor and the debtor; but this does not authorize the distribution of a single cause of action into fractional parts, and their assignment to several persons without the consent of the debtor. *Id.*

7. Stock certificates

It is well settled that certificates of stock are not negotiable instruments. At the same time, they are so constantly used as collateral and passed from hand to hand, when the blank transfer and power of attorney on their backs has been formally executed by the party to whom they were issued, that the general custom in the city of Washington is to regard the holder as the owner for the purpose of selling or pledging them. *National Safe Deposit Sav. & Trust Co.* v. *Hibbs* (32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

While indorsed certificates of stock do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser. *Id.*

8. Subscriptions to capital stock of corporation

Subscriptions to the capital stock of a corporation may be assigned by the corporation, so as to give the assignee a right to sue in his own name. *Crook* v. *International Trust Co.* (32 App. D.C. 490).

§ 28–2304. General assignments including choses in action.

In a general assignment which includes choses in action, it is not necessary to execute a separate assignment of each chose in action, but the assignee, by virtue of the general assignment, may sue in his own name on the several choses in action included therein. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2504 (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 434).

The reference to the "Municipal Court" is changed to "Criminal Division of the Court of General Sessions" in view of the change in name by Public Law 88–241.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Action by assignor after assignment

As defenses must be pleaded the court did not err in excluding evidence even though it might have proved that the action was not in the name of the assignee, or in the name of the assignor to the use of the assignee, as the practice was at common law, but an action by an assignor after his assignment. *Pierce* v. *Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D.C. 156).

§ 28–2305. Contract to assign future salary or wages.

(a) A contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor, if made in the District of Columbia, is invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, is unenforceable in any court within the District of Columbia.

(b) Whoever, in the District of Columbia demands or receives from a debtor an assignment of salary or wages to be thereafter earned by the debtor, or notifies an employer that he holds an assignment of such salary or wages, upon conviction shall be fined not more than $200 or imprisoned not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Division of the District of Columbia Court of General Sessions by the Corporation Counsel of the District of Columbia or one of his assistants. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2505 (Mar. 3, 1901, ch. 854, § 434–A, as added Dec. 20, 1944, 58 Stat. 819, ch. 610, § 3).

The phrase "after the date of such contract" is deleted as redundant in view of the provision relating to salary or wages "to be earned", indicating it relates to future salary and wages.

Changes are made in phraseology.

Chapter 25.—BONDS AND UNDERTAKINGS

Sec.
28–2501. Definitions.
28–2502. Action on bond in a penal sum containing an avoidance condition.
28–2503. Action on bond to United States—Interest by private person.
28–2504. Fiduciary's bond—Discharge only after accounting.

§ 28–2501. Definitions.

A bond, when required by or referred to in this Code, means an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and enforceable by action.

An undertaking means an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against the party and his sureties, if any, the party and sureties submitting themselves to the jurisdiction of the court for that purpose. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 28–2401, 28–2402 (Mar. 3, 1901, 31 Stat. 1264, 1265, ch. 854, §§ 478, 479).

The definition of a bond is from section 28–2401, and the definition of an undertaking is from section 28–2402.

Changes are made in phraseology.

CROSS REFERENCES

Attachment and garnishment bond, see § 16–501.
Replevin, undertaking in, see § 16–3704.
Sureties generally, see § 16–4101 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Automobile negligence action against nonresident 1
Bonds and undertakings distinguished 2
Purpose and effect 3

1. Automobile negligence action against nonresident

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Dew* v. *Simon* (D.C. Mun. App. 1953, 95 A. 2d 482).

2. Bonds and undertakings distinguished

Unlike the ordinary appeal bond, which is an obligation under seal, with a fixed penalty, and a definite condition, limited to become effective or otherwise by the determination of the appeal, an undertaking is without seal, or fixed penalty, and without condition; and is simply a promise or an assumption of liability, to perform a judgment, or to pay damages and costs. *Tenney* v. *Taylor* (1 App. D.C. 223).

3. Purpose and effect

While an undertaking differs in form from the bond, its essential purpose and effect are the same as those of the bond, to give the guaranty of an additional person as security for the costs that might be incurred and the damages that might result to an appellee by the prosecution of an appeal that prevents him from realizing his claim as speedily and as effectively as he might otherwise have done. *Tenney* v. *Taylor* (1 App. D.C. 223).

§ 28–2502. Action on bonds in a penal sum containing an avoidance condition.

A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act or of certain duties, has the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, may not exceed the penalty of the bond. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2405 (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 480).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction 1
Forgery 2
Sureties 3

1. Construction

In suit against sureties bond is to be strictly construed. *United States* v. *Maloney* (4 App. D.C. 505).

Recitals in bond, and all material traversable matter set forth in breaches assigned and which have not been traversed are to be taken as admitted and withdrawn from the province of the jury. *Id.*

2. Forgery

Surety can not plead forgery of principal's name to bond when surety executes it after its purported execution by the principal. *United States* v. *Boyd* (8 App. D.C. 440).

3. Sureties

By the execution of a bond and its return to the principal or his agent for delivery to the obligee the surety becomes estopped to set up any condition not known to that obligee, upon which his signature has been obtained. *United States* v. *Boyd* (8 App. D.C. 440).

Discontinuance of a suit as to the principal will not, in the absence of explanation, be sufficient to release the sureties on his bond who were named as codefendants. *Starr* v. *United States* (8 App. D.C. 552, reversed on other grounds 17 S. Ct. 223, 164 U.S. 627, 41 L. Ed. 577).

§ 28–2503. Action on bond to United States—Interest by private person.

When a bond is executed to the United States by a fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, a person aggrieved by a breach of the condition may maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of the breach. The custodian of the bond shall furnish a certified copy thereof to the party for that purpose on payment of the legal fees therefor. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2406 (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 481; June 30, 1902, 32 Stat. 530, ch. 1329).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Action on official bond 1
Disbursing officer 2
Plumbing inspector 3
Questions on appeal 4

1. Action on official bond

Action on an official bond running to the District of Columbia cannot be maintained by one not a party thereto, in the absence of the consent of the District or an express statute authorizing such action. *District of Columbia to Use of Langellotti* v. *Fidelity & Deposit Co.* (1921, 271 F. 383, 50 App. D.C. 309).

2. Disbursing officer

Although bond required of a disbursing officer of the Government when first filed was not properly executed and it was returned to the principal who properly executed it, there is no presumption against its genuineness, in a suit by the Government against the surety, and in such transaction the relation between the Government and the disbursing officer is not that of principal and agent. *Howgate* v. *United States* (3 App. D.C. 277, affirmed 17 S. Ct. 682, 166 U.S. 571, 41 L. Ed. 1119).

In action by United States on the bond of an alleged delinquent disbursing officer, a duly authenticated transcript from the Treasury Department of the accounts of the disbursing officer offered in evidence by the United States is not admissible, for it does not include all transactions with the United States during term of service, but only those transactions connected with the appropriations for which such official is alleged to be in default need be shown by such transcript. *Goff* v. *United States* (22 App. D.C. 512).

3. Plumbing inspector

Those injured by neglect of the inspector of plumbing in the performance of his official duties may maintain an action in the name of the District of Columbia to his use on the bond given by the inspector, under a plumbing regulation requiring the inspector to give a bond of $5,000, "conditioned for the faithful performance of the duties of his office." *District of Columbia* v. *Ball* (22 App. D.C. 543).

Plumbing regulations of District of Columbia requiring inspector of plumbing to give bond with sureties for benefit of persons aggrieved by his acts of neglect, is valid, although the act of Congress of April 23, 1892 (27 Stat. 21, ch. 53) authorizing appointment of inspector of plumbing does not require bond. *Id.*

One who purchases house in which plumbing is defective without knowledge of such facts existing, may maintain action on official bond of inspector of plumbing for failure to inspect plumbing when the house was in the course of construction. *Id.*

4. Questions on appeal

Where person claiming to have posted collateral under agreement for surety bond for release of certain alien did not, in suit for recovery for alleged breach of such agreement, mention this section providing cause of action for those aggrieved by breach of bond given to United States to secure performance of a duty, this section could not be relied upon on appeal. *Chong Moe Dan* v. *Maryland Casualty Co. of Baltimore* (D.C. Mun. App. 1953, 93 A. 2d 286).

§ 28–2504. Fiduciary's bond—Discharge only after accounting.

A person appointed by order or decree of the court to a fiduciary office may not discharge his bond for the due performance of his duties, by receipts, re-

leases, or acquittances from himself, as attorney for parties interested, to himself as fiduciary; but the funds or estate for the application whereof he is responsible shall be considered as remaining in his hands, and the bond shall continue in force as against both principal and sureties until the funds or estate are fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than himself. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2407 (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 482).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Sale trustee

Bond of a trustee appointed by court in an equity cause to sell real estate which runs to the United States, can be put in suit by person injuriously affected and in such suit the United States is the nominal plaintiff only. *Morse* v. *United States ex rel. Hine* (29 App. D.C. 433).

When decree for sale of infant's real estate is void for want of jurisdiction, the bond of trustee appointed to make the sale is void also, and the surety may show such invalidity in a suit against him on the bond by the United States. *Id.*

This section does not apply where payment was by the sale trustee to himself as testamentary trustee. *United States Fidelity & Guar. Co.* v. *Klein* (1932, 54 F. 2d 828, 60 App. D.C. 354, certiorari denied 52 S. Ct. 394, 285 U.S. 544, 76 L. Ed. 936).

Chapter 27.—BUSINESS HOLIDAYS AND COMPUTATION OF TIME

SUBCHAPTER I.—BUSINESS HOLIDAYS

Sec.
28–2701. Holidays designated—Time for performing acts extended.

SUBCHAPTER II.—COMPUTATION OF TIME

28–2711. Daylight-saving time.

SUBCHAPTER I.—BUSINESS HOLIDAYS

§ 28–2701. Holidays designated—Time for performing acts extended.

The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor Day; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year are holidays in the District for all purposes. When a day set apart as a legal holiday falls on Sunday the next succeeding day is a holiday. In such cases, and when a Sunday and a holiday fall on successive days, all commercial paper falling due on any of those days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular business day succeeding. Every Saturday is a holiday in the District for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District. An act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or bank institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and liability or loss of rights of any kind may not result from such delay. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–616 (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1389; June 30, 1902, 32 Stat. 543, ch. 1329; July 13, 1946, 60 Stat. 534, ch. 576, Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(2)).

The first three sentences of section 28–616 were repealed by Public Law 88–243. The balance constitutes this section.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Judicial notice 1
Saturday half-holiday 2

1. Judicial notice

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns* v. *District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

2. Saturday half-holiday

Saturday half-holiday not excluded in computing 30 days' notice required under § 1219, D.C. 1901 (§ 45–902). *Ocumpaugh* v. *Norton* (24 App. D.C. 296). See, also, *McCoy* v. *Duehay* (1922, 279 F. 1001, 51 App. D.C. 363); *Morse* v. *Brainerd* (42 App. D.C. 448); *Swenk* v. *Nicholls* (39 App. D.C. 350).

SUBCHAPTER II.—COMPUTATION OF TIME

§ 28–2711. Daylight-saving time.

The Board of Commissioners of the District of Columbia may advance the standard time applicable to the District one hour for the period commencing not earlier than the last Sunday of April and ending not later than the last Sunday of October, of each year. Any such time established by the Commissioners under the authority of this section, during the period of the year for which it is applicable, is the standard time for the District of Columbia. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2804 (Apr. 28, 1953, 67 Stat. 23, ch. 30; July 2, 1956, 70 Stat. 482, ch. 491).

Changes are made in phraseology.

This chapter is based upon Public Law 86–584, the District of Columbia Uniform Act for Simplification of Fiduciary Security Transfer.

Chapter 29.—FIDUCIARY SECURITY TRANSFERS

Sec.
28–2901. Definitions.
28–2902. Registration in name of fiduciary.
28–2903. Assignment by fiduciary.
28–2904. Evidence of appointment of incumbency.
28–2905. Adverse claims.
28–2906. Nonliability of corporation and transfer agent.
28–2907. Nonliability of third persons.
28–2908. Terretorial applicability.
28–2909. Tax obligations.

§ 28–2901. Definitions.

In this chapter, unless the context otherwise requires:

(1) "assignment" includes a written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer;

(2) "claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of a similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties;

(3) "corporation" means a private or public corporation, association or trust issuing a security;

(4) "fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee;

(5) "person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or other legal or commercial entity;

(6) "security" includes a share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation;

(7) "transfer" means a change on the books of a corporation in the registered ownership of a security;

(8) "transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

(Aug. 30, 1964, 78 Stat. 672, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2321 (July 5, 1960, 74 Stat. 322, Pub. L. 86–584, § 1).

Arabic numbers are substituted for lower-case letters in designating the clauses, to conform to the style of the revision. The terms defined are not capitalized in the definitions unless they are capitalized in their normal usage in the text.

Minor changes are made in phraseology.

§ 28–2902. Registration in name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code § 28–2322 (July 5, 1960, 74 Stat. 322, Pub. L. 86–584, § 2).

§ 28–2903. Assignment by fiduciary.

Except as otherwise provided by this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

(Aug. 30, 1964, 78 Stat. 673, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2323 (July 5, 1960, 74 Stat. 322, Pub. L. 86–584, § 3).

Arabic numbers are substituted for letters in designating clauses, to conform to the style of the revision.

§ 28–2904. Evidence of appointment of incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall require the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof, and dated within sixty days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt reasonable standards with respect to evidence of appointment or incumbency under this subsection. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

(Aug. 30, 1964, 78 Stat. 673, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2324 (July 5, 1960, 74 Stat. 323, Pub. L. 86–584, § 4).

Arabic numbers are substituted for letters in designating clauses, to conform to the style of the revision.

Changes are made in phraseology.

§ 28–2905. Adverse claims.

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may notify in writing the corporation or transfer agent of the claim. The corporation or transfer agent is not put on notice unless the written notice (1) identifies the claimant, the registered owner, and the issue of which the security is a part, (2) provides an address for communications directed to the claimant, and (3) is received before the transfer. This chapter does not relieve the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized by subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order. (Aug. 30, 1964, 78 Stat. 673, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2325 (July 5, 1960, 74 Stat. 323, Pub. L. 86–584, § 5).

Changes are made in phraseology.

§ 28–2906. Nonliability of corporation and transfer agent.

A corporation or transfer agent does not incur liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2326 (July 5, 1960, 74 Stat. 323, Pub. L. 86–584, § 6).

Minor changes are made in phraseology.

§ 28–2907. Nonliability of third persons.

(a) A person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is not liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) When a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2327 (July 5, 1960, 74 Stat. 324, Pub. L. 86–584, § 7).

Minor changes are made in phraseology.

§ 28–2908. Territorial application.

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in the District of Columbia in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in the District of Columbia the signature of a fiduciary in connection with such a transaction. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2328 (July 5, 1960, 74 Stat. 324, Pub. L. 86–584, § 8).

§ 28–2909. Tax obligations.

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of the District of Columbia. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2329 (July 5, 1960, 74 Stat. 324, Pub. L. 86–584, § 9).

Chapter 31.—FRAUDULENT CONVEYANCES

Sec.
28–3101. Intent to defraud creditors.
28–3102. Intent to defraud purchasers.
28–3103. Fiduciaries' suit to vacate fraudulent transaction.

§ 28–3101. Intent to defraud creditors.

A conveyance or assignment, in writing or otherwise, of an estate or interest in land or its rents and profits, or in goods or things in action, and a charge upon the same, and a bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder or defraud persons having just claims or demands, of their lawful suits, damages, or demands, is void as against the persons so hindered or defrauded

This section does not affect the title of a purchaser for value, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of the grantor. The question of fraudulent intent is a question of fact and not of law. (Aug. 30, 1964, 78 Stat. 674, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–3101 (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1120).

The word "delay" in the phrase "hinder, delay, or defraud" is deleted as redundant.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. In general

By the terms of the statute a final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered, and this section likewise makes every conveyance of lands with intent to defraud creditors not merely voidable, but void. *Reilly* v. *Sabin* (1936, 81 F. 2d 259, 65 App. D.C. 125).

Where it did not appear that anyone but plaintiff was hindered, delayed, or defrauded by transfer of property sought to be set aside as fraudulent, judgment to the extent that it avoided transfer as against other persons should be modified. *Brady* v. *Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

A court should not enrich a fraudulent grantee at expense of parties not responsible for original grantor's attempt to avoid creditors. *Hurwitz* v. *Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Every case involving question whether debtor made fraudulent conveyances depends on its own circumstances. *Beaton Co.* v. *Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

Even if a conveyance is, on its face, presumptively fraudulent, it is susceptible of explanation. *Snider* v. *Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

2. Consideration

Where there was substantial evidence to support findings that note and deed of trust recorded on date prior to date when the United States filed notice of tax lien were without consideration and in fraud of creditors, such findings were not clearly erroneous and hence judgment based on such findings would be affirmed. *H. Milloff and S. Milloff* v. *United States and A. Goldkind* (1962, 306 F. 2d 783, 113 U.S. App. D.C. 176).

In action for judgment declaring plaintiff to be common-law wife of a defendant, and as such entitled to an inchoate right of dower in certain realty allegedly conveyed by him to his daughter before establishment of marriage, evidence, including undisputed testimony that defendant paid $4,000 for property in question and conveyed it to his daughter, for $10 which was the entire consideration, established that codefendant was not a purchaser for valuable consideration within meaning of this section. *Leonardo* v. *Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

Words "valuable consideration" as used in portion of this section providing that such section shall not be construed to impair title of a purchaser for a "valuable consideration" means fair equivalent of the property conveyed. *Id.*

The sum of $10, constituting the entire consideration allegedly paid for realty worth $4,000, did not constitute "valuable consideration" within meaning of that term as used in this section providing that certain conveyances of realty made with intent of defrauding creditors shall be void except as against a purchaser for a valuable consideration, without notice. *Id.*

3. Construction

This section providing that conveyances made with intent of defrauding certain persons shall be void is entitled to liberal construction. *Leonardo* v. *Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

4. Duty of court

Where issue regarding whether conveyance is fraudulent is presented to trial court, its duty is to determine from circumstances surrounding transaction of parties whether the intent proscribed by this section was present and in doing so, it should apply the rule that the parties intend the natural and probable consequences of their acts, and if the inevitable consequences of a conveyance are to hinder, delay or defraud creditors, the court must so hold notwithstanding denial of such intent by the parties. *Snider* v. *Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

5. Evidence

Fraud must be shown by clear and convincing evidence and by evidence which is not equivocal that is, equally consistent with either honesty or deceit, but circumstantial evidence is sufficient to prove fraud. *Wynne et al.* v. *Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

Evidence sustained trial court's judgment setting aside, as in fraud of creditors, conveyances of realty. *Id.*

5.50. Fraudulent conveyance

Where company extended credit to its customers and received promissory notes which were endorsed in blank without recourse to bank as security for credit extended to the company ranging from 60 to 65 percent of the face value of pledged notes and company acted as bank's agent for collection and remitted payments to a special account at the bank which was used to reduce debt owed by company to bank, and company submitted quarterly reports to bank indicating status of collections from consumer-debtors and company's book accounts indicated that consumer notes were pledged to the bank, the transfer of security from the company to the bank was not a fraudulent conveyance under District of Columbia law providing that transfers which are intended to hinder, delay or defraud creditors or transferor are voidable. *M. Stevan, Trustee etc.* v. *Union Trust Company etc., et al.* (1963, 316 F. 2d 687, 115 U.S. App. D.C. 36).

6. Good faith

In determining whether debtor's conveyances are fraudulent, the vital question is the good faith of the transactions. *Beaton Co.* v. *Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

7. Intent of parties

In suit to set aside, as fraud on creditors, conveyances of realty, where grantee was found to be in same position as grantor, so far as knowledge and intent were concerned, and conveyance was found to have been fraudulent, neither grantor nor grantee could claim to have been injured by creditor's pursuit of one remedy rather than another. *Wynne et al.* v. *Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

In creditor's suit to declare void certain transfers of title and of interests by debtor to others, record sustained determination that the transactions were consistent with an honest purpose and were free from fraud and wrongdoing. *Beaton Co.* v. *Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

Where it appears from all surrounding circumstances that acts of parties are consistent with an honest purpose, it is not an inevitable consequence that conveyance will hinder, delay or defraud creditors, and the court should find accordingly. *Snider* v. *Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

8. Mortgages

A mortgage made with intent to hinder, delay, or defraud the bankrupt's creditors may be declared void *Universal Dealers Co.* v. *Cromelin* (1940, 109 F. 2d 828, 71 App. D.C. 234, certiorari denied 60 S. Ct. 1088, 310 U.S. 641, 84 L. Ed. 1409).

The giving of the mortgage followed by withholding it from record pursuant to an agreement or understanding, operated to hinder, delay, and defraud the bankrupt's creditors as the parties are presumed to intend the natural and probable consequences of their own acts and whatever may have been the intention of the petitioner is immaterial. *In re Nolan Motor Co., Inc.* (1938, 25 F. Supp. 186, affirmed 109 F. 2d 282, 711 App. D.C. 234, certiorari denied 60 S. Ct. 1088, 310 U.S. 641, 84 L. Ed. 1409).

9. Other persons

Under this section providing that every conveyance of realty made with intent to defraud creditors or "other persons" having just claims shall be void as against per-

sons so defrauded, a wife, in regard to her property rights arising from marriage, is one of the "other persons" protected. *Leonardo* v. *Leonardo et ano.* (1958, 251 F. 2d 22, 102 U.S. App. D.C. 119).

9.50. Pleading, sufficiency of

Judgment creditor's complaint alleging fraudulent conveyances of real estate was sufficient to allege fraudulent intent on part of debtor in making conveyance. *F. S. Bowen Electric Co., Inc.* v. *J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

10. Presumptions

In determining whether debtor made fraudulent transfer, certain rebuttable presumptions go into balance, in creditor's favor, but if it appears from circumstances that challenged acts of parties to transfer are consistent with an honest purpose, the presumptions are overcome. *Beaton Co.* v. *Berberich* (1943, 135 F. 2d 831, 77 U.S. App. D.C. 377).

11. Question of fact

In District of Columbia, fraud is matter of fact, and therefore, where creditors established that conveyance had been made and recorded with intent to defraud, it would not be necessary to success of their suit to set aside conveyance that they proved that grantor was insolvent. *Wynne et al.* v. *Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

Under this section, the question of fraudulent intent is a "question of fact" and not a "question of law". *Snider* v. *Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

12. Quitclaim deeds

Where circumstances indicated that debtor was not owner of property or any part of it but at best had a claim which, in hands of creditor, might have had some nuisance value as a cloud on title, that real owner was debtor's brother and that deed from debtor to brother was in nature of a quitclaim to clear brother's title, evidence sustained findings and conclusion that conveyance did not violate this section regarding fraudulent conveyances. *Snider* v. *Kelly* (1943, 135 F. 2d 817, 77 U.S. App. D.C. 363, certiorari denied 64 S. Ct. 62, 320 U.S. 764, 88 L. Ed. 456).

13. Review

Finding that payment by insolvent corporation of its debt to its sole stockholder and managing director was made with intent to hinder or delay a creditor was not clearly erroneous and supported conclusion that transfer was void as against creditor. *Ferro Inc., and Powell Jr.* v. *John Thompson Beacon Windows, Ltd.* (1960, 278 F. 2d 280, 107 U.S. App. D.C. 400).

On appeal from judgment setting aside conveyance as fraud on creditors, sole function of Court of Appeals is to decide whether or not trial judge was clearly in error in being convinced by evidence presented, and it is not function of Court of Appeals to weigh evidence and it is not necessary that Court of Appeals itself find evidence on issue of fraud to be clear and convincing. *Wynne et al.* v. *Boone et al.* (1951, 191 F. 2d 220, 88 U.S. App. D.C. 363).

13.50 Summary judgment

Evidence in hearing on motion for summary judgment in action to set aside fraudulent conveyances showed existence of genuine issue of fact as to debtor's alleged fraudulent intent precluding summary judgment. *F. S. Bowen Electric Co., Inc.* v. *J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

14. Transfer to wife of bankrupt

Where there was a fraudulent transfer of bankrupt's property to wife, conveyance was set aside in equity. *Harding* v. *Aaronson* (1934, 69 F. 2d 845, 63 App. D.C. 107).

§ 28–3102. Intent to defraud purchasers.

A conveyance of an estate or interest in land, or its rents and profits, and a charge upon the same, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, are void, as against the purchasers. Such a conveyance or charge is not deemed fraudulent in favor of a subsequent purchaser who has actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–3102 (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1121).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Question of fact

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

§ 28–3103. Fiduciary's suit to vacate fraudulent transaction.

An executor, administrator, receiver, assignee, or trustee of an estate, or of the property and effects of an insolvent estate, corporation, association, partnership, or individual, may, for the benefit of creditors and others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers, and agreements made in fraud of the rights of a creditor, including themselves and others interested in an estate or property held by or of right belonging to him or the estate. Whoever, in fraud of the rights of creditors and others receives, takes, or in any manner interferes with the estate, property, or effects of a deceased person or insolvent corporation, association, partnership, or individual is liable, in the proper action, to the executors, administrators, receivers, or trustees of the estate or property for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to the trust estate. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–3103 (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1122).

This section is rewritten in the present tense, to conform to the style of the revision.

Changes are made in phraseology.

CROSS REFERENCES

Attachment or garnishment because of fraudulent conveyance, see §§ 16–501, 16–529.

Fraudulent attornment, see § 45–934.

NOTES TO DECISIONS UNDER PRIOR LAW

Action to avoid deed 1
Increase of rights 2
Trust, enforcement of 3

1. Action to avoid deed

Section authorizes executors to file suit setting aside or canceling a deed executed by testator and to collect the expenses incident thereto. *Ramsey* v. *Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

2. Increase of rights

This section is "procedural", and the person for whose benefit transfer is sought to be set aside can get no increased substantive rights because administrator is bringing the suit. *Hurwitz* v. *Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Where administratrix of deceased grantor sought to set aside transfers that allegedly had illegal purpose of defeating creditors and administratrix did not seek to benefit creditors, but to set aside the transfers for benefit of grantor's heirs, the heirs obtained no additional rights because their interests were represented by administratrix. *Id.*

3. Trust, enforcement of

Administratrix of deceased grantor could enforce "resulting trust" and recover proceeds of realty on behalf of heirs of grantor, notwithstanding evidence that transfers which administratrix sought to set aside had illegal purpose of defeating grantor's creditors. *Hurwitz* v. *Hurwitz* (1943, 136 F. 2d 796, 78 U.S. App. D.C. 66, 148 A.L.R. 226).

Chapter 33.—INTEREST AND USURY

Sec.
28–3301. Rate of interest expressed in contract.
28–3302. Rate of interest not expressed and on judgments.
28–3303. Usury defined.
28–3304. Action to recover usury paid.
28–3305. Unlawful interest credited on principal debt.
28–3306. Parties compelled to testify.

§ 28–3301. Rate of interest expressed in contract.

The parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2702 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1179; Apr. 19, 1920, 41 Stat. 568, ch. 153, § 1).

The words "bond, bill, promissory note" are deleted as surplusage and covered by "instrument in writing."

Changes are made in phraseology.

CROSS REFERENCE

Interest and charges permitted under Money Lenders Law, see § 26–601 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Additional loan as usury 1
Bonus or commission as usury 2
Incomplete transaction 3

1. Additional loan as usury

Usury sustained based on additional loan payable to intermediary. *Quinn* v. *National Mtg. & Inv. Co.* (1932, 57 F. 2d 410, 61 App. D.C. 44).

2. Bonus as usury

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank Washington, Inc., et al.* v. *Page* (1957, 249 2d 938, 102 U.S. App. D.C. 33).

Where bank was offering to make loan at six percent with one person commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest. *Id.*

"Bonus" being a sum paid to the creditor for the continued use of the money, clearly counts as interest for the purpose of the usury law; and a bonus, which, when added to the nominal interest on a 2-year extension exceeded 8 percent, was usurious. *Bowen* v. *Mount Vernon Sav. Bank* (1939, 105 F. 2d 796, 70 App. D.C. 273).

3. Incomplete transaction

Where transaction contemplated, with usurious rates, never took place, claim of usury could not be sustained *Rosslyn Steel & Cement Co.* v. *Etchison* (1932, 57 F. 2d 409, 61 App. D.C. 43).

§ 28–3302. Rate of interest not expressed and on judgments.

The rate of interest in the District upon the loan or forbearance of money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract, is 6 percent per annum. Interest, when authorized by law, on judgments against the District of Columbia, is at the rate of not exceeding 4 percent per annum. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2701 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1178; July 1, 1902, 32 Stat. 610, ch. 1352).

Changes are made in phraseology.

CROSS REFERENCE

Interest and charges permitted under Money Lenders Law, see § 26–601 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Judgments 1
Legal rates 2
Occasional loans on real estate 3
Usury 4

1. Judgments

While act April 22, 1870, 16 Stat. 91, ch. 59, fixed the rate of interest on judgments it did not cause such judgments or decrees to bear interest which would not have borne interest previously thereto. *Washington & G. R. Co.* v. *Tobriner* (1893, 13 S. Ct. 557, 147 U.S. 571, 37 L. Ed. 284).

If a judgment regularly rendered in the Supreme (District) Court of the District in a common-law action of tort cannot bear interest a fortiori it should not be permitted to run upon the judgment of the court of claims. *Gray* v. *District of Columbia* (1 App. D.C. 20).

2. Legal rates

When debtor defaults, compensation equal to value of the money, which is legal interest upon it, will be permitted during time the party is in default, provided a claim is made in declaration for the interest. *District of Columbia* v. *Metropolitan R. Co.* (8 App. D.C. 322, affirmed 25 S. Ct. 28, 195 U.S. 322, 49 L. Ed. 219).

All that plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she admitted. *Richards* v. *Bippus* (18 App. D.C. 293).

3. Occasional loans on real estate

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money. *Zirkle* v. *Daly* (1932, 54 F. 2d 455, 60 App. D.C. 344).

4. Usury

"When the promise to pay a sum above the legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." *Whelpley* v. *Ross* (25 App. D.C. 207).

Illegality of the transaction does not affect the obligation to pay a tax, and though the accruals represented legally uncollectible usury, there was at all times a reasonable expectation that they would be paid, and this fact is enough to constitute them income to the same extent as if the several amounts were actually paid. *Barker* v. *Magruder* (1938, 95 F. 2d 122, 68 App. D.C. 211).

Usury law protects the maker in spite of knowledge. The same financial pressure which forced him to submit to usury in the first place may force him to renew. To permit a mere renewal or extension of the contract to purge the usury would defeat the purpose of the statute. *Bowen* v. *Mount Vernon Sav. Bank* (1939, 105 F. 2d 796, 70 App. D.C. 273).

§ 28–3303. Usury defined.

If a person or corporation contracts in the District.

(1) verbally, to pay a greater rate of interest than 6 percent per annum, or

(2) in writing, to pay a greater rate than 8 percent per annum, the creditor shall forfeit the whole of the interest so contracted to be received.

This section does not affect sections 26–601 to 26–611. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2703 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1180; June 30, 1902, 32 Stat. 542, ch. 1329; Apr. 19, 1920, 41 Stat. 568, ch. 153, § 1).

The last sentence is substituted for the proviso.

The use of provisos is discontinued because most "provisos" are not true provisos and simply reflect the use of legalistic terminology which is being corrected in the codification bills generally.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general 1
Bonus as usury 2
Burden of proof 3
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Occasional loans on real estate 14
Prepayment charge 15
Purchase at discount 16
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Sufficiency of pleading 18
Summary judgment 19

1. In general

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed by this section is usury under whatever name or pretense the exaction, extension, or forebearance may be designated. *Von Rosen* v. *Dean* (1930, 41 F. 2d 982, 59 App. D.C. 359).

It is the agreement and not necessarily its performance which renders debit usurious. *Holcombe* v. *O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

2. Bonus as usury

Where face amount of promissory note was $2,133 payable three years after date with interest at six percent per annum, but only $1,933 was advanced to maker of note, with $200 constituting a bonus, such note was usurious unde rusury statute. *Holcombe* v. *O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Note or obligation is affected with usury if principal makes the loan, knowing that his agent has exacted a bonus or commission, though for his own sole benefit, which, with the interest payable to the principal, would amount to more than the rate permitted by law. *Richards* v. *Bippus* (18 App. D.C. 293).

3. Burden of proof

Under usury statute burden is upon borrower to show that contract was usurious. *Industrial Bank of Washington, Inc., et al.* v. *Page* (1957, 249 F. 2d 938, 102 U.S. App. D.C. 33).

In action on promissorffiy note defendant had burden of proving alleged usury but defendant was not required to prove usury where usury was established by plaintiff's evidence. *Holcombe* v. *O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Burden of proof is upon the borrower to show that the lender knew or was chargeable with the knowledge that his agent exacted a commission in obtaining loan for borrower in excess of the legal rate of interest. Such knowledge may be implied as well as actual. *Searl* v. *Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

4. Commissions

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank of Washington, Inc., et al.* v. *Page* (1957, 249 F. 2d 938, 102 U.S. App. D.C. 33).

Where bank was offering to make loan at six percent with one percent commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest, *Id.*

The usury statute may be violated by deducting a commission in advance as well as by any other means by which money in excess of legal rate is exacted. *Holcombe* v. *O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Where a lender's agent with the lenders' knowledge and approval, takes the borrower's separate promissory note payable to himself for his compensation for obtaining the loan for the borrower, the agent cannot recover on the note when the interest on the principal loan plus the agent's commission exceeds the legal rate. *Searl* v. *Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

This section may be violated by deducting a commission in advance as well as by any other means by which money in excess of the legal rate is exacted. *Hartman* v. *Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

5. Construction

The Loan Shark Law, § 26–601 et seq., the usury law, this section and § 28–2704 et seq., and the statute regarding financial institutions, § 47–1701 et seq. are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman* v. *Lubar* (1943, 133 F. 2d 44, 77 U.S. App. D.C. 95, certiorari denied 63 S. Ct. 1329, 319 U.S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U.S. 808, 88 L. Ed. 488).

6. Defense

Usury can be invoked as a defense but not as an affirmative cause of action; that is, usury may be used as a shield but not as a sword. *Royall* v. *Yudelevit et al.* (1953, 161 F. Supp. 217, reversed on other grounds 268 F. 2d 577).

Where there is a single consideration for one or more promises and any part of the transaction is illegal, the promises are wholly unenforceable. *Searl* v. *Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

7. Forfeiture

Under this section providing as to a usurious contract that creditor shall forfeit the whole of the interest, forfeiture applies not only to the usurious excess, but also to the lawful interest included in the contract rate, and this section forfeits all of the interest contracted for, if unpaid, or permits recovery, if paid by action within one year after payment. *Searl et ano.* v. *Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

8. Holder in due course

In suit between makers of promissory notes aggregating $10,200, secured by deeds of trust on realty, and endorse of such notes, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee was not, as he claimed, a holder in due course for value without notice, but that he had actually and knowingly lent money to makers and had used payee as an intermediary to avoid the usury statute. *Meredith et al.* v. *Cabell et al.* (1954, 211 F. 2d 810, 94 U.S. App. D.C. 73).

9. Judgment

In suit between makers of promissory notes aggregating $10,200, secured by deeds of trust on realty, and endorsee of such notes who was in fact the actual lender, involving issue as to whether the loan transaction was unsurious, evidence sustained finding that the endorsee had advanced to the makers, in return for the notes, only the sum of $7,510, of which $5,476.10 had been repaid, and warranted judgment that, unless unpaid balance be paid within 30 days, trustees designated in deeds of trust might sell property to satisfy amount found to be due. *Meredith et al.* v. *Cabell et al.* (1954, 211 F. 2d 810, 94 U.S. App. D.C. 73).

10. Knowledge of holder

One who acquires promissory notes with knowledge of usury in their inception is not a bona fide holder for value. *Mollohan v. Masters* (45 App. D.C. 414, certiorari denied 37 S. Ct. 245, 242 U.S. 652, 61 L. Ed. 546).

11. Laws applicable to contract

In absence of evidence to contrary it would be presumed that a promissory note which was dated at Washington, D.C., the place of payment being blank, was made in District of Columbia and was payable at place of making

and was therefore subject to District of Columbia usury law. *Holcombe* v. *O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Usurious contract examined and held to be subject to laws of District of Columbia, although expressly declared to be made pursuant to laws of Virginia. *Washington Nat. Bldg. & Loan Assn.* v. *Pifer* (31 App. D.C. 434, 14 Ann. Cas. 734). See also, *Croissant* v. *Empire State Realty Co.* (29 App. D.C. 538).

Where agreement made in Maryland between defendant and certain individuals provided that the individuals should organize a corporation to acquire land in District of Columbia, the corporation to erect buildings thereon and execute to individuals a $19,000 mortgage thereon payable in one year, to be assigned to defendant upon payment of $15,000 to the corporation, and mortgage note was delivered in District of Columbia, where defendant paid the $15,000 and corporation paid the note in full one year later, as between the corporation and defendant the contract was made in District of Columbia, the laws of which permitted corporation to recover money usuriously exacted. *Plitt* v. *Seven Corners Realty* (App. D.C. 1945, 149 F. 2d 832).

12. Liability of agent

An agent was personally liable for unlawful interest which he turned over to his principal with knowledge that the principal was not entitled thereto. *Searl et ano.* v. *Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

In suit to recover the unpaid balance on a note given by defendants to plaintiff as commission for securing a loan from plaintiff's wife with counterclaim for usury, plaintiff was subject to separate liability and to a suit individually without joinder of his wife as principal. *Id.*

13. Limitations

In suit to recover the unpaid balance of a note with defense of usury, where concealment by plaintiff from defendants of the fact that the lender was his wife constituted fraud, bar of limitations against assertion of the defense of usury did not begin to run against the defendants until the fraud was discovered. *Searl et ano.* v. *Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

14. Occasional loans on real estate

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle* v. *Daly* (1932, 54 F. 2d 455, 60 App. D.C. 344).

15. Prepayment charge

Even if premium charged by lender for privilege of permitting borrower to prepay entire amount of outstanding balance on note secured by deed of trust on realty could be considered as interest, transaction was not usurious where total amount of interest paid plus the premium was less than lawful maximum interest computed to date the loan was paid. *Atlantic Life Ins. Co. of Richmond, Va.* v. *Wolf* (D.C. Mun. App. 1947, 54 A. 2d 641).

Where neither note nor deed of trust on realty securing the note contained any provision permitting repayment by borrower before specified date of maturity, or vested any right or option of acceleration in borrower, the charge of premium to permit borrower to prepay entire amount of outstanding balance on note could not be considered as "interest", as regards usury. *Id.*

16. Purchase at discount

It is not usurious to purchase a note at a discount. *Elliott* v. *Schlein* (D.C. Mun. App. 1954, 104 A. 2d 418).

Where discounted notes were taken by creditor in payment of debt and not as security therefor, there was no mortgage so as to render the transaction usurious though the parties agreed that if proceeds realized exceeded amount of debt, debtors should be reimbursed accordingly and that in case of deficiency they would make it up. *Krevait* v. *Turover* (D.C. Mun. App. 1944, 39 A. 2d 207).

Where defendants owed plaintiffs money which they could not pay, it was not usury for defendant to give and plaintiff to receive in payment of the debt notes at a discount of 3 percent of their face value multiplied by the number of years required for the maturity of the notes. *Id.*

It is not usurious to purchase a note at a discount or to accept in payment of a debt a note at less than its face value. *Id.*

A purchase of negotiable paper in market overt "at a heavy discount below the face value" does not show usury. *Metropolitan Loan & Trust Co.* v. *Schafer* (44 App. D.C. 356).

17. Set-off

Usurious interest cannot be set off against the principal debt. *Presbrey* v. *Thomas* (1 App. D.C. 171).

When usurious interest has been paid or taken, the sole and exclusive remedy for the borrower is by a suit within 12 months to recover the amount of the usury; and the usurious interest could not be made the subject of set-off or counterclaim, when after the lapse of 12 months suit is instituted for the recovery of the principal claim. *Lawrence* v. *Middle States Loan Bldg. & Constr. Co.* (7 App. D.C. 161).

"A defense of usury good against one obligation will not constitute a valid offset against a distinct and independent obligation, though between the same parties." *Metropolitan Loan & Trust Co.* v. *Schafer* (44 App. D.C. 356).

"If suit is brought on the principal debt after payment of usurious interest, such usury may be made a valid set-off against the principal debt. Usury upon obligations paid and canceled can not be used as a set-off against a subsequent obligation even between the same parties, either in law or in equity." *Id.*

18. Sufficiency of pleading

In suit to recover the unpaid balance on a note, counterclaim was a sufficient pleading of the defense of usury as a vindication of the defendant's legal right or the remedying of a legal wrong. *Searl et ano.* v. *Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

19. Summary judgment

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law", claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. *Indian Lake Estates, Inc.* v. *Lichtman* (1962, 311 F. 2d 776, 114 U.S. App. D.C. 90).

§ 28–3304. Action to recover usury paid.

If a person or corporation in the District directly or indirectly takes or receives a greater amount of interest than is declared by this chapter to be lawful, whether in advance or not, the person or corporation paying the same may within one year after the date of payment sue for and recover the amount of the unlawful interest so paid. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–2704 (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1181).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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Purchase at discount 11
Questions for jury 12
Repayment of loan 13
Running of period 14
Sufficiency of evidence 15

1. Admissibility of evidence

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that

of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent, without required license and should have been admitted. *Hartman* v. *Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

2. Cancellation

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by this section or three-year general statute, § 12–201. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

This section applies to recovery of any payments made on usurious obligation in excess of amount necessary to extinguish the note, though cancellation of usurious obligation was not barred. *Id.*

3. Commissions

Commissions deducted in advance by the lender constitute usury. *Von Rosen* v. *Dean* (1930, 41 F. 2d 982, 59 App. D.C. 359).

4. Construction

The time limitation in this section permitting recovery of all interest paid on a usurious transaction provided suit is begun within one year from date of such payment, is not a general statute of limitations but is a limitation imposed by statute which created right and is limitation of right itself. *Earll* v. *Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

5. Defenses

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

Although plaintiff's action to recover unpaid balance on note given by defendants to plaintiff as commission for obtaining a loan was brought more than one year after last payment, usury would defeat recovery protanto on the note, but affirmative relief by way of recovery of payments made was barred by this section. *Earll* v. *Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

6. Inferences

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman* v. *Lubar* (D.C. Mun. App. 1946, 49 R. 2d 553).

7. Interest forfeited

Whole of the interest contracted to be paid by the terms of the trust is forfeited as usury when the trust deed for amount in addition to the loan was payable to an intermediary who professed to sell the same to the actual lender. *Quinn* v. *National Mtg. & Inv. Co.* (1932, 57 F. 2d 410, 61 App. D.C. 44).

This section authorizing recovery of all "unlawful interest" paid on a loan, does not limit recovery to the amount above the lawful rate of interest, but authorizes recovery of the whole of the interest paid. *Cockrell* v. *First Federal Savings & Loan Ass'n* (1943, 33 A. 2d 621).

8. Joint action

Action for recovery of usury brought by joint makers of note within one year after last payment on debt by one of the makers was not barred, even as to maker who had made no payment on debt for more than one year. *Knott* v. *Jackson* (1943, 31 A. 2d 662).

Where makers related by marriage or blood executed a joint and several note secured by joint deed of trust on two properties, and proceeds of note were used by them under an apparent joint agreement, the three joint makers could maintain joint action and obtain joint judgment for usury admittedly paid, even though they could not show exactly what amount each had individually paid. *Id.*

9. Laches

An action to cancel usurious obligation was not barred by laches, in view of this section allowing recovery of usurious payments made within one year before suit, regardless of date of the note, since refusal of cancellation would merely result in circuity of action. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

10. Pleading

Where borrowers sought to recover usurious interest more than one year after last payment, lender's agent did not waive defense of one year time limitation by failing to plead it in view of fact that time limitation was imposed by this section which created the right and unlike statute of limitations it did not have to be pleaded in defense. *Earll* v. *Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

Where both the original and amended complaints were based on a claim for usury paid on account of a loan to plaintiff and it was apparent that defendants were not misled by an amendment setting up different dates and amounts, the amendment did not set up a "new cause of action" barred by limitations. *Cockrell* v. *First Federal Savings & Loan Ass'n* (1943, 33 A. 2d 621).

11. Purchase at discount

Evidence did not sustain finding that lender was purchaser of note secured by trust deed and was not in fact the lender of the amount loaned thereon but established that the pretense of buying the note from the vendor was nothing more than an attempt to cover up the usurious loan, and hence the borrower was entitled to recover usurious interest paid. *Elliott* v. *Schlein* (D.C. Mun. App. 1954, 104 A. 2d 418).

12. Questions for jury

In action by joint makers of note for recovery of usury, question whether $50 payment made by lender to his attorney on account of expenses and fees in connection with the loan was proper charge against the borrowers was properly submitted to jury. *Knott* v. *Jackson* (1943, 31 A. 2d 662).

Where joint makers of note instituted joint action for recovery of usury but lender contended that one maker, upon making payment more than one year before institution of action, was released from all obligation under note and that as a consequence her claim was barred by one-year limitation of this section, question whether such maker was released from further personal liability at time she made the payment was properly submitted to jury. *Id.*

13. Repayment of loan

One-year limitation runs, not from the time that usurious interest may have been deducted, but from the time the last payment was made. "Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest." *Brown* v. *Slocum* (30 App. D.C. 576).

Section 28–2703 et seq. relating to usury do not destroy the obligation to repay the principal on account of the usury, but requires a forfeiture of all interest contracted for, if unpaid, or permits its recovery, if paid, by action begun within one year after payment. *Cockrell* v. *First Federal Savings & Loan Ass'n* (1943, 33 A. 2d 621).

An action to recover usurious interest paid can only be maintained after last payment on debt has been made. *Knott* v. *Jackson* (1943, 31 A. 2d 662).

A loan transaction which would be free from usury if loan were paid at agreed maturity date is not rendered usurious by borrower's voluntary repayment of loan before maturity, even though, by reason of such repayment, amount of interest received by lender exceeds lawful interest computed to day the loan is paid, provided that total interest received by lender does not exceed lawful interest computed to maturity date stipulated in loan contract. *Atlantic Life Ins. Co. of Richmond, Va.* v. *Wolf* (D.C. Mun. App. 1947, 54 A. 2d 641).

14. Running of period

In action to recover unpaid balance on note given by defendants to plaintiff as commisison for obtaining a loan which was made by plaintiff's wife to defendants through straw party, one year time limitation would not be extended in absence of evidence of fraud on part of plaintiff in concealing name of actual lender *Earll* v. *Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

15. Sufficiency of evidence

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman v. Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

§ 28–3305. Unlawful interest credited on principal debt.

In an action upon a contract for the payment of money with interest at a rate forbidden by law, any payment of interest that may have been made on account of the contract is deemed to be payment made on account of the principal debt; and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid. A bona fide indorsee of negotiable paper purchased before due is not affected by any usury exacted by a former holder of the paper unless he had notice of the usury before his purchase. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2705 (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1182; June 30, 1902, 32 Stat. 542, ch. 1329).

Changes are made in phraseology.

NOTES TO DECISIONS

Innocent holders for value 1
Maker of new notes 2
Recovery of interest 3

1. Innocent holders for value

No relief to borrowers of money at usurious rates against innocent holders for value. *Whipp* v. *Glueck* (1932, 58 F. 2d 523, 61 App. D. C. 118).

2. Maker of new notes

Quaere, whether maker of new notes to take the place of former usurious notes to which he was a party can take advantage of this section and plead usury as a defense to all except the principal sum due. *King* v. *Curtin* (31 App. D.C. 23).

3. Recovery of interest

Finance company, which was not a holder in due course of promissory note calling for usurious rate of interest, was not entitled to recover any interest on note. *J. W. Beatty* v. *Franklin Investment Co. Inc.* (1963, 319 F. 2d 712, 115 U.S. App. D.C. 311).

§ 28–3306. Parties compelled to testify.

When in an action to recover a debt the defendant claims that payment of unlawful interest on the debt has been made to the plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received the unlawful interest may be examined as a witness to prove the payment, and may not be excused from testifying in relation thereto. A creditor who is made defendant in a proceeding for discovery as to payments of unlawful interest made to him may not be excused from answering. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–2706 (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1183).

Changes are made in phraseology.

Chapter 35.—STATUTE OF FRAUDS

Sec.
28–3501. Estate created otherwise than by deed.
28–3502. Special promise to answer for debt or default of another.
28–3503. Declaration, grant, and assignment of trust.
28–3504. New promise or acknowledgment of contract—Action against joint contractors.
28–3505. New promise or acknowledgment of debt incurred during infancy.

§ 28–3501. Estate created otherwise than by deed.

An estate, attempted to be created for a greater term than one year in real estate, other than by deed, is an estate by sufferance. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–3001 (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1116).

The term "real estate" is substituted for "lands, tenements, or hereditaments" to conform with the style of revisions generally.

Changes are made in phraseology.

Cross Reference

Other provisions requiring estates in lands to be created by written instrument, see §§ 45–106, 45–820.

NOTES TO DECISIONS UNDER PRIOR LAW

Assignment of lease 1
Executed oral assignment 2
Extension agreement 3
Lease by agent-lessor 4
Ouster of tenants 5
Parol agreement 6
Termination of oral tenancy 7

1. Assignment of lease

An assignment of a lease conveys an interest in realty and comes within the statute of frauds if for a greater term than one year, however, it is well established that an oral agreement creating an interest in land which has been carried into effect is valid and enforcible and where the lessee turns the premises over to the assignee and the assignee enters into possession with the consent of the lessor and pays rent, the assignment is complete and the rights and liabilities of the parties are not affected by the statute. *Diatz* v. *Washington Technical School* (D.C. Mun. App. 1950, 73 A. 2d 227, rehearing denied 73 A. 2d 718).

2. Executed oral assignment

An oral agreement creating an interest in land which has been carried into effect is valid. *Mars* v. *Spanos* (1944, 139 F. 2d 369, 78 U.S. App. D.C. 230).

Where retiring partner received back his contributions to partnership and orally assigned to copartner rights in five-year lease of store, lease became property of general partnership under oral agreement between assignee and third person, and general partnership immediately took possession of leased premises with implied consent of landlord and discharged obligations under lease until dissolved by order of court, as respects rights of assignors and asignees, both assignments were completely executed and hence not avoidable for violation of this section. *Id.*

3. Extension agreement

A written six months' extension agreement which was entered into by lessor and lessees before expiration of five-year lease, and which did not create or purport to create a new estate, and which made no change in original lease except to fix new expiration date, was valid although not under seal, and lessees would not be entitled to thirty-day notice to quit as tenants at sufferance. *Binder* v. *Jaffe* (D.C. Mun. App. 1953, 101 A. 2d 260).

4. Lease by agent-lessor

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgment the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied statute requiring that a lease shall be evidenced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. *Paul* v. *Holloway* (D.C. Mun. App. 1956, 122 A. 2d 774).

5. Ouster of tenants

Plaintiff-grantee could not ignore the legal procedure provided for ousting tenants, and compromise with them for a sum which it might elect to pay, and then recover that sum from defendant-grantors upon any basis of breach of warranty. *Standard Sav. Bank* v. *Stone* (1922, 280 F. 1016, 52 App. D.C. 42).

6. Parol agreement

In suit for specific performance of deceased's alleged parol agreement to leave house and premises to plaintiff in consideration for his caring for deceased, where plaintiff and wife moved into house after it was purchased by deceased, plaintiff paid no rent during lifetime of deceased who occupied room of house and occasionally ate meals with plaintiff, evidence supported judgment dismissing action on ground that performance was not sufficient to take case out of operation of statute of frauds. *Slaughter* v. *Madison* (1943, 135 F. 2d 650, 77 U.S. App. D.C. 226, certiorari denied 63 S. Ct. 1331, 319 U.S. 768, 87 L. Ed. 1717).

7. Termination of oral tenancy

Where, at most, claim of tenant was that landlord orally promised that tenant could remain in possession of lot used as a parking lot at such rental as landlord might from time to time fix and to which tenant might agree, landlord's notice to tenant to quit terminated the tenancy, though landlord had allegedly agreed that lease was to run until landlord desired to erect a building on the lot. *Snitman* v. *Goodman et al.* (D.C. Mun. App. 1955, 118 A. 2d 394).

§ 28–3502. Special promise to answer for debt or default of another.

An action may not be brought to charge an executor or administrator upon a special promise to answer damages out of his own estate, or to charge the defendant upon a special promise to answer for the debt, default, or miscarriage of another person, or to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of real estate, of any interest in or concerning it, or upon an agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action is brought, or a memorandum or note thereof, is in writing, which need not state the consideration and signed by the party to be charged therewith or a person authorized by him. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–3002 (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1117).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Acknowledgment

Where defendant, with whom plaintiff had made a gratuitous bailment of money, wrote plaintiff, in response to letters requesting payment of the money, that he was in no position "at present" to send plaintiff any money, the letter was sufficient acknowledgment of the debt to stop running of statute of limitations. *Irvine* v. *Gradoville* (1955, 221 F. 2d 544, 95 U.S. D.C. 263).

2. Ambiguities

Necessary elements of a writing required by statute of frauds may not be supplied by parol, but ambiguities in the terms may be resolved by other evidence. *Sweeney* v. *Jacobsen* (1952, 103 F. Supp. 399, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

3. Application generally

This section applies to an agreement which appears from its terms to be incapable of performance within a year. *Street* v. *Maddux* (1928, 24 F. 2d 617, 58 App. D.C. 42).

In action brought by real estate broker for damages resulting from alleged breach by defendant of agreement whereunder defendant allegedly promised to pay to broker and defendant's son an amount equal to retail price of realty over specified amount, if broker and defendant's son would assist defendant in obtaining title to realty for specified price, wherein broker claimed no interest in realty, statute of frauds was not applicable and afforded no defense. *Kyle* v. *Wiley* (D.C. Mun. App. 1951, 78 A. 2d 769).

4. Approval

The fact that printed form used in making agreement for purchase of realty provided that the deposit was subject to the owner's approval did not render agreement signed by purchasers and broker but not by owner unenforceable under this section where such approval had previously been given in exchange of telegrams between owner and broker. *Ochs* v. *Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

5. Contract signed by purchaser only

Where purchaser brought action against vendor for breach of contract to convey land and only produced carbon copy of contract bearing only the signature of the purchaser, such document was no more than an offer to buy and was within statute of frauds and was unenforceable against vendor. *Greenfield* v. *Murray, Executor* (D.C. Mun. App. 1955, 117 A. 2d 227).

6. Description of property

If contract contains in itself no description of the property to be sold, standing alone, no court of equity could specifically enforce it, but, if the description is found in other writings, forming part and parcel of the transaction, the omission is not fatal. *Shell Eastern Petroleum Products* v. *White* (1934, 68 F. 2d 379, 62 App. D.C. 332).

7. Estoppel

One who induces another by a parol agreement to change his position so materially that unless inducing

agreement is enforced a fraud results is estopped to set up statute of frauds to bar such enforcement. *Brewood* v. *Cook et al.* (1953, 207 F. 2d 439, 92 U.S. App. D.C. 386).

That employee, upon obtaining employment, came from Harrisburg to Washington, did not estop employer asserting that alleged oral contract for two years' employment was barred by statute of frauds. *Easter* v. *Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

8. Evidence

In action against vendor by purchaser to have contract for sale of realty canceled and to recover payments made under the contract, on ground that purchaser was induced to sign a contract by fraudulent misrepresentations of vendor, evidence of settlement agreed to by the parties after suit had been begun, was properly admitted over objection that offers to compromise are not admissible in support of a contested claim or defense, though agreement was oral and payments were not to be completed within one year, so that no suit could have been brought on the agreement itself. *Hiltpold* v. *Stern* (D.C. Mun. App. 1951, 82 A. 2d 123).

9. Fraud

Doctrine of fraud may be invoked to prevent statute of frauds from becoming an instrument of fraud. *Easter* v. *Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

In absence of other and stronger circumstances, a mere refusal to perform an oral agreement is not such fraud as to prevent application of statute of frauds, despite hardship to a plaintiff. *Id.*

10. Improvements

One who has been induced to alter his position and make improvements on property based on a parol contract may enforce such contract in the courts notwithstanding this section. *De Grazia* v. *Anderson* (D.C. Mun. App. 1948, 62 A. 2d 194).

11. Memorandum

One party's memorandum, evidencing oral agreement for sale of land, not signed by other parties or any one on their behalf was insufficient. *Bell* v. *Morgan* (1952, 199 F. 2d 168, 91 U.S. App. D.C. 65).

Where there was a full and definite agreement as to all essentials which parties intended to be binding, and the parties signed a memorandum which was sufficient to satisfy the statute of frauds, execution of a formal contract as contemplated by the memorandum was not necessary to effect a valid contract between the parties. *Sweeney* v. *Jacobsen* (1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

Written memorandum, signed by two parties, which stated that a $500 deposit had been received from one of the parties, and that such deposit represented partial payment on agreed price of $7,500 cash and assumption of existing note in purchase of business and machinery of named business, the location of which was stated, plus agreement of lease, and which stated that formal contract was to be drawn later, with full settlement within 30 days of such memorandum, was sufficiently definite and certain to satisfy statute of frauds, since it left no doubt as to who was purchaser, who was seller, what property was involved, and what the terms were. *Id.*

A written memorandum, to remove an oral agreement for two years' employment of statute of frauds, must state all promises of parties with sufficient clarity and definiteness to render essential terms of agreement clear without resort to parol testimony. *Easter* v. *Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

Letter wherein defendant offered employment and stated that defendant was likely to be busy for at least the succeeding two years was not a sufficient memorandum of an alleged oral contract for two years' employment to remove contract from statute of frauds. *Id.*

12. —— Disclosure of vendor

A contract for the sale of land, where the memorandum fails to disclose the name of the vendor, can not be enforced. *Storrow* v. *Concord Club* (1934, 70 F. 2d 852, 63 App. D.C. 190).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and asked for $1,000 deposit and thereafter broker and purchasers signed agreement which identified purchasers and property and fully set out purchase price and manner of payment, the contract was binding under this section, notwithstanding the owner's name did not appear in the agreement and it was never signed by him. *Ochs* v. *Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted", owner telegraphed broker to accept offer, the fact that agreement, which was signed by broker and purchasers, did not name owner and was sent to owner who refused to sign it did not establish that broker did not have authority to make agreement binding on owner under this section. *Id.*

Where contract for sale of real estate described the seller as the "seller" and there was no description of the premises allegedly involved except that the contract stated that the premises were "owner occupied", there was no reasonably sufficient description of the premises involved and parol testimony was inadmissible to supply the description. *Fitzgan* v. *Burke* (D.C. Mun. App. 1948, 61 A. 2d 721).

13. Option within year

While plaintiff's contract with defendant was in parol, the option might have been exercised within a year, and the statute therefore did not apply. *Campbell* v. *Rawlings* (1922, 280 F. 1011, 52 App. D.C. 37, 23 A.L.R. 854).

14. Oral promise

Where debt of open advertising account had been incurred by corporation, and after corporation had become insolvent, one of the officers made several payments on debt with his personal funds and stated that he wanted advertiser to get his money, it was doubtful that oral statement constituted a promise to pay corporate debt and even assuming it did, any claim based on it was barred by statute of frauds. *Alvin Epstein Advertising Corp.* v. *Helfer and Spector* (D.C. Mun. App. 1957, 138 A. 2d 925).

15. —— Stockholder's oral promise

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debts, evidence, verbal or documentary, failed to establish consideration which would support an original promise to pay debt, independent of simultaneous responsibility of corporation. *Smith* v. *Lo Castro* (D.C. Mun. App. 1957, 134 A. 2d 486).

16. —— Extension by oral agreement

Under District of Columbia law, provision for time of performance in contract for sale of business and leasehold of premises upon which business was conducted, which contract was required to be in writing and signed by party to be charged, could validly be extended by oral agreement, where time was not of essence of contract. *Jacobsen* v. *Sweeney* (1953, 202 F. 2d 461, 92 U.S. App. D.C. 93).

Where lessor and lessees entered into written six months' extension agreement before expiration of five-year lease, lessees were not entitled to remain in possession past the extension period on basis of alleged parol option for additional six months' extension beyond first extension in view of fact that alleged option did not comply with Statute of Frauds and was not supported by any consideration. *Binder* v. *Jaffe* (D.C. Mun. App. 1953, 101 A. 2d 260).

17. Parol evidence

Where time is not of the essence of a written contract within the statute of frauds, strict compliance with covenant as to time of performance may be waived, prior to breach, by oral agreement of the parties without affecting other provisions of the written contract, and the mutual promises of the parties are sufficient consideration for such oral agreement. *Sweeney* v. *Jacobsen* (1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may be properly inferred that the party did not intend the writing to be a complete

and final statement of the whole transaction. *Jay's Restaurant* v. *Jack Stone Co.* (D.C. Mun. App. 1949, 62 A. 2d 799).

18. Performance—Defeasance distinguished

An oral contract wherein plaintiff was to assume duties of resident manager of an apartment development for which services he was to receive $75 per week in addition to a rent-free apartment for the duration of the contract which was to continue until plaintiff completed his law studies as a student duly matriculated at a law school or unless plaintiff were obliged to discontinue his law studies because of deficient scholarship or for some similar reason, was void under the statute of frauds as an agreement not to be performed within the space of one year from the making thereof, in view of fact that at the time of contract plaintiff had approximately three years of law studies to complete, and in view of fact that provision for termination of the contract which might have occurred within one year was not performance necessary to take the agreement out of the operation of the statute. *Coan, Jr.* v. *Orsinger and Tyler Gardens Corp.* (1959, 265 F. 2d 575, 105 U.S. App. D.C. 201).

Fact that a contract may be terminated, or further performance rendered impossible, within the period of one year, does not take it out of the statute of frauds where the obligation is one which cannot be performed within the year, since discharge from liability under a contract is not performance thereof within the statute. *Id.*

19. —— Partial performance

Remaining in employ of one orally agreeing to devise real estate when husband wished to move to another city did not amount to such a change in the course of service in life of promisee as would justify invocation of exceptional rule of equity permitting specific performance. *Faunce* v. *Woods* (1925, 5 F. 2d 753, 55 App. D.C. 330, 40 A.L.R. 208).

That employee worked for six weeks under alleged oral contract for two years' employment was not sufficient part performance to take contract from statute of frauds. *Easter* v. *Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

Generally, nothing short of full performance will take a contract not to be performed within one year from within statute of frauds. *Id.*

20. —— Susceptible of performance within one year

An alleged co-broker's agreement was not within the statute of frauds where it would have been fully performed as soon as the purchaser purchased the building site which could have occurred within one year, it being immaterial that the sale for which commissions were sought took place more than a year after the alleged co-broker's agreement. *Snyder etc.* v. *Hillegeist et al.* (1957, 246 F. 2d 649, 100 U.S. App. D.C. 368).

An agreement which is capable, possible or susceptible of performance within one year is not within the statute of frauds. *Id.*

21. —— Time of performance

Although time of performance was specifically provided in written memorandum, in view of mutual agreement between parties on or before date of performance to waive strict compliance and to extend time for the performance, time was not of the essence of the contract, and therefore the contract as orally extended was not void under statute of frauds. *Sweeney* v. *Jacobsen* (1952, 103 F. Supp. 393, affirmed 202 F. 2d 461, 92 U.S. App. D.C. 93).

22. Personal obligation

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and § 38–121 authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within this section requiring special promise to answer for debt of another person to be in writing. *Jones* v. *Guice* (D.C. Mun. App. 1948, 57 A. 2d 190).

23. Pleading

Complaint, alleging in effect that owner employed broker to sell realty, that in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and that broker and purchasers signed agreement which carried out authority granted to broker and which identified purchasers and property and set out purchase price and manner of payment, stated a claim on which relief could be granted, although agreement did not name, and was not signed by owner. *Ochs* v. *Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

24. Question for court

Where evidence is clear and unconflicting, legal sufficiency of memorandum to remove case from statute of frauds is question for court. *Easter* v. *Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

25. Renewal notice under lease

Where extended term of a lease is fixed by and is a part of the original written lease, and comes into existence merely by lessee's exercising his option and giving required notice, no question as to application of statute of frauds arises. *Worthing, T/A etc.* v. *Serkes* (D.C. Mun. App. 1955, 111 A. 2d 877).

Renewal notice of tenant unsigned, but bearing stamped trade name, enclosed in the same envelope containing his rental check which bore tenant's signature and trade name was sufficient compliance with requirements of lease. *Id.*

26. Review

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debt, in view of general findings in favor of stockholder, municipal court of appeals must assume that issues of consideration, and whether promise, if made, was an original and independent or merely a collateral promise to answer for the debt, default, or miscarriage of the corporation, had been resolved in favor of stockholder. *Smith* v. *Lo Castro* (D.C. Mun. App. 1957, 134 A. 2d 486).

27. Sale—Leasehold

Under District of Columbia law, agreement for sale of business and leasehold of premises upon which business was conducted, covered an interest in land and was required to be in writing and signed by party to be charged. *Jacobsen* v. *Sweeney* (1953, 202 F. 2d 461, 92 U.S. App. D.C. 93).

28. —— Realty

Under this section, an agreement for sale of real estate is enforceable only when it is in writing and there is a sufficient description of the thing sold, the price to be paid, and the names of the party selling and the party buying, and none of such elements can be supplied by parol testimony. *Ochs* v. *Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84). See, also, *Fitzaan* v. *Burke* (D.C. Mun. App. 1948, 61 A. 2d 721).

29. Settlements

The statute of frauds requiring written evidence of an agreement to answer for the death, default or miscarriage of another is not applicable where the settlement agreement in compromise rested on the theory of direct liability by reason of ownership of the striking car. *Saunders System Washington Co.* v. *Kufner* (D.C. Mun. App. 1950, 75 A. 2d 136).

30. Trusts

Where complaint charged facts indicating that defendant held all but her own share of land in question charged with a constructive trust for plaintiff and certain other designated persons, plaintiff was not foreclosed from recovery of her share by this section. *Major* v. *Shaver* (1946, 6 F.R.D. 207).

31. Unjust enrichment

Where plaintiff's alleged oral option to purchase land was invalid under statute of frauds, and plaintiff's alleged action in interesting third party to purchase land was not for benefit of landowners but solely to enable plaintiff to make profit, unintended benefit conferred on landowners when they sold to such third party at higher price was not necessarily unjust and plaintiff could not

recover value of the benefit under theory of unjust enrichment. *Rosenkoff* v. *Finkelstein* (1952, 195 F. 2d 203, 90 U.S. App. D.C. 263).

32. Waiver

In discharged employee's action to recover salary after discharge, wherein employer at outset denied alleged contract of employment and made it clear that employer was relying on statute of frauds, employee's testimony as to conversation concerning employment was admissible on issue as to whether there had been an oral agreement for employment, and employer's failure to object to such testimony did not constitute a waiver of the defense based on statute of frauds. *Easter* v. *Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

33. Writings

Generally, a check may be deemed to be a writing sufficient to satisfy requirements of statute of frauds if it bears notations or contains references to papers which embody the essential terms of the contract. *Alvin Epstein Advertising Corp.* v. *Helfer and Spector* (D.C. Mun. App. 1957, 138 A. 2d 925).

Even if oral statements constituted a promise to pay debt of corporation, issuance of three personal checks by alleged promisor in part payment of debt where checks were not in evidence could not constitute a writing sufficient to satisfy requirements of statute of frauds. *Id.*

34. —— Related writings

A complete contract regarding realty binding under this section may be gathered from letters, writings and telegrams between the parties relating to the subject matter of the contract when so connected with each other that they may be fairly said to constitute one paper relating to the contract. *Ochs* v. *Weil* (1944, 142 F. 2d 758, 79 U.S. App. D.C. 84).

§ 28–3503. Declaration, grant, and assignment of trust.

A declaration or creation of trust or confidence of real estate which is not in writing, signed by the party who is by law enabled to declare the trust or by his last will in writing, is void.

A grant or assignment of a trust or confidence which is not in writing, signed by the party granting or assigning it, or by his last will, is void.

Where a conveyance is made of real estate by which a trust or confidence is or may arise or result by the implication or construction of law, or is transferred or extinguished by an act or operation of law, the trust or confidence is of the same effect as it would have been if this section had not been enacted. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–3003 (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1118).

Changes are made in phraseology.

Cross References

Conveyances in general, see § 45–101 et seq.
Estates in lands in general, see § 45–801 et seq.
Mortgages and deeds of trust, see § 45–601 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

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1. Fraudulent verbal promise

Facts presented bring case within the second provision of the Statute of Frauds and a trust would result by implication or construction of law. *Bennett* v. *Bennett* (1949, 83 F. Supp. 19).

2. Generally

This section requires, not only that writing be sufficient to establish trust, but that it show precisely what the trust covers. *Moore* v. *Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379).

The requisite of certainty in instrument creating trust in realty includes subject matter embraced within trust, beneficiaries, the nature and quantity of interests which they are to have and manner in which trust is to be performed. *Moore* v. *Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379). See also, *Loehler Constr. Co.* v. *Auth* (1931, 51 F. 2d 435, 60 App. D.C. 273).

3. Implied trusts

Implied or resulting trusts are recognized by the law in force in the District of Columbia. *Haliday* v. *Haliday* (1926, 11 F. 2d 565, 56 App. D.C. 179).

The statute relating to declarations and grants of trust and to implied trusts did not preclude court from recognizing as a trust fund money on deposit with building association in name of testatrix as trustee for her grandson who was a polio victim. *In re Scott's Estate* (1951, 96 F. Supp. 290).

4. Informal writing sufficient

The writing required to prove the trust may be informal provided it establishes the fact and the terms of the trust. *Tschiffely* v. *Tschiffely* (1940, 107 F. 2d 191, 70 App. D.C. 386).

5. Oral agreements

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm* v. *Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

6. Parol trust unenforceable

Parol trust agreement is unenforceable under status of frauds. *Baldi* v. *Ambrogi* (1937, 89 F. 2d 845, 67 App. D.C. 101). See, also, *Chiswell* v. *Johnston* (1924, 299 F. 681, 55 App. D.C. 3); *Dahlgren* v. *Dahlgren* (1924, 1 F. 2d 755, 55 App. D.C. 52, certiorari denied 45 S. Ct. 125, 266 U.S. 626, 69 L. Ed. 475).

7. Taxation

Where taxpayer and his housekeeper had entered into agreement whereby he bought and paid for house but title was taken in her name, and, pursuant to agreement that house should belong to survivor upon death of other, housekeeper had willed house to taxpayer, transfer of house to taxpayer at death of his housekeeper was subject to tax under District of Columbia Code section taxing all property transferred from any person who may die, seized or possessed thereof, either by will, or by law, or by right of survivorship. *Slyder* v. *District of Columbia* (1951, 187 F. 2d 217, 88 U.S. App. D.C. 170).

8. Third parties

Verbal trusts are without force or effect under statute of frauds to defeat rights of third parties. *Thurm* v. *Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

9. Writing, sufficiency of

Where wife first executed deed conveying to husband one-third interest in property and then, having kept possession of deed, destroyed it, simultaneously making will devising property to her brother and sister, and still later wife wrote explanatory letter to husband stating that her brother and sister would deal fairly with him and "Do the best you can, and sell, and enjoy the little I have been able to accumulate and which I now gladly and lovingly pass on to the three of you", the letter was not a "declaration of trust" in favor of husband. *Moore* v. *Guy* (1943, 135 F. 2d 476, 77 U.S. App. D.C. 379).

§ 28–3504. New promise or acknowledgement of contract—Action against joint contractors.

In an action upon a simple contract, an acknowledgement or promise by words only is not sufficient evidence of a new or continuing contract whereby to take the case out of the operation of the statute of limitations or to deprive a party of the benefit thereof unless the acknowledgement or promise is in writing, signed by the party chargeable thereby. This section does not alter or take away, or lessen the effect of a payment of principal or interest made by any person. In actions against two or more joint contractors, or executors, or administrators, if it appears at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of the defendants, is nevertheless entitled to recover against any other defendant by virtue of a new acknowledgement or promise or otherwise, judgment may be given for the plaintiff as to that defendant. An indorsement or memorandum of a payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom the payment is to be made, is sufficient proof of the payment so as to take the case out of the operation of the statute of limitations. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–3005 (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271).

The term "real estate" is substituted for "lands, tenements, or hereditaments" to conform with the style of revisions generally.

Changes are made in phraseology.

CROSS REFERENCE

Statutes of limitation, see § 12–301 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Acknowledgment 2
Of partner 3
Estoppel 4
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New contracts 8
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1. Prior decisions

Mann v. *Cooper* (2 App. D.C. 226); *Flannery* v. *Maine Red Granite Co.* (3 App. D.C. 395); *Pumphrey* v. *Boggan* (8 App. D.C. 449); *Cropley* v. *Eyster* (9 App. D.C. 373); *Reed* v. *Tierney* (12 App. D.C. 165).

2. Acknowledgment

Defendant can not be permitted, after he has made an acknowledgment, the effect of which may be to remove the bar, or to prevent the running of the statute, as to a particular account, upon a different occasion, by his declaration or claim, to overcome, qualify, or defeat the effect of his previous acknowledgment. *Bean* v. *Wheatley* (13 App. D.C. 473).

A promise to pay to the creditor an indebtedness at such time as creditor should need it is not a conditional promise to pay but an acknowledgment and new promise, and sufficient to avoid bar of statute of limitations. *Cooper* v *Olcott* (1 App. D.C. 123).

3. Acknowledgment of partner

When debt is legally subsisting and not affected by the statute of limitations, an acknowledgment or promise of one partner will avoid the operation of the statute as to the rest. *Flannery* v. *Maine Red Granite Co.* (3 App. D.C. 395).

4. Estoppel

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass* v. *Eiker, trading as T. E. Eiker & Co.* (D.C. Mun. App. 1957, 135 A, 2d 153).

5. Evidence

Testimony of oral acknowledgment and promise to pay lebt within statute of limitations is admissible in action against one upon the debt when there is other and written evidence consisting of letters relating to the debt, as § 1271 does not make testimony of oral acknowledgment wholly inadmissible, but provides only that it shall not be sufficient evidence. *Shelley* v. *Westcott* (23 App. D.C. 135).

Parol evidence, if competent, is admissible as to indorsement of payment on note. *Madison* v. *White* (1932, 54 F. 2d 440, 60 App. D.C. 329).

Evidence of a new promise may be given under the general issue joined on the plea of limitations. *Pumphrey* v. *Boggan* (8 App. D.C. 449).

6. Extension of time

Agreement for the extension of time for payment was good and binding upon the parties thereto; and consequently the right of action upon the note, by reason of such extension of time for payment, did not accrue until the 16th of March 1894; and as this action was commenced on the 19th of February 1897, therefore the statute of limitations formed no bar to the right of recovery. *Reed* v. *Tierney* (12 App. D.C. 165).

7. Judgment for execution

Judgment for execution is a new judgment and statute of limitations begins to run from the new date. *Mann* v. *Cooper* (2 App. D.C. 226).

8. New contracts

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three-year statute of limitations, notwithstanding that more than three years had then elapsed since the signing of the first note. *Garfinkle* v. *Needle* (1953, 201 F. 2d 202, 91 U.S. App. D.C. 342).

This section respecting form of acknowledgement in actions of debt, or upon the case, grounded upon any simple contract, in order to take case out of operation of statute of limitations, has reference only to a unilateral act or statement, and does not render ineffective a new promise supported by contemporaneous consideration. *Cafritz* v. *Koslow* (1948, 167 F. 2d 749, 83 U.S. App. D.C. 212).

Where plaintiff, in sister's action to recover money allegedly loaned to brother, was seeking to recover on basis of new relationship founded upon oral contract whereby old indebtedness barred by limitations was incorporated as an element of consideration, old indebtedness, if it ever existed and remained unsatisfied, would afford consideration for new oral contract, since statute of limitations operated merely to extinguish the remedy and not the right. *Id.*

9. Notes secured by mortgage

On petition by holder of one of two notes secured by mortgage for leave to participate in sale of mortgaged property in foreclosure proceedings by the holder of the other note, in this proceeding the bar of limitation, or lapse of time, does not apply, as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (9 App. D.C. 373).

10. Sufficiency of acknowledgment

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *Grass* v. *Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the Securities and Exchange Commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such debts. *Id.*

"To effect a confirmation of a contract entered into during infancy, the act must have been done with knowledge that the contract was voidable." *Manning* v. *Gannon* (44 App. D.C. 98). See, also, *Gannon* v. *Manning* (42 App. D.C. 206).

"A distinct and unequivocal acknowledgment by the debtor of the debt as a still subsisting personal obligation constitutes an implied promise to pay it, and this, 'according to all the authorities, is all that is required to remove the statute in the case of a simple contract'" (referring to such a promise in writing). *Green* v. *Reeves* (47 App. D.C. 83). See, also, *Hornblower* v. *George Washington University* (31 App. D.C. 64, 14 Ann. Cas. 696); *Strong* v. *Andros* (34 App. D.C. 278, 19 Ann. Cas. 101).

Correspondence between parties, to be sufficient acknowledgment of indebtedness to toll the statute, must recognize subsisting personal obligation. *Hayden* v. *International Banking Corp.* (1930, 41 F. 2d 107, 59 App. D.C. 313).

The acknowledgment must not be accompanied by circumstances which negative any intention or promise to pay. *Moore* v. *Snider* (1940, 109 F. 2d 840, 71 App. D.C. 293, certiorari denied 60 S. Ct. 808, 309 U.S. 685, 84 L. Ed. 1029).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan* v. *Lincoln Inv. Corp.* (1940, 110 F. 2d 130, 71 App. D.C. 365).

11. Summary judgment

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their claims on two notes was induced by representations or promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *Grass* v. *Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

§ 28–3505. New Promise or acknowledgement of debt incurred during infancy.

An action may not be maintained to charge a person upon an acknowledgment of, or promise to pay, a debt contracted during infancy, made after full age, except for necessaries, unless the acknowledgement or promise is in writing signed by the party to be charged therewith. This section does not affect ratification by conduct. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 1, eff. Jan. 1, 1965.)

Revision Notes

Based on D.C. Code, 1961 ed., § 28–3006 (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271; June 30, 1902, 32 Stat. 542, ch. 1329).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

1. Tort action

Seller of automobile to minor representing himself to be of age, who disaffirms purchase, may nevertheless recover damage to car. *Dick Murphy, Inc.* v. *Holcer* (1932, 57 F. 2d 431, 61 App. D.C. 65).

TITLE 29.—CORPORATIONS

Chap. Sec.
10. Nonprofit Corporations..... 29–1001

Chapter 8.—COOPERATIVE ASSOCIATIONS

§ 29–818. Directors.

NOTES TO DECISIONS

1. Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by the board. *Capitol Cab Cooperative Ass'n Inc.* v. *W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

§ 29–821. Referendum on acts of directors.

NOTES TO DECISIONS

1. Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by board. *Capitol Cab Cooperative Assn Inc.* v. *W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

Chapter 9.—BUSINESS CORPORATIONS (1954)

Sec.
29–947. Action without a meeting.
29–959. Verification no longer required.

§ 29–902. Definitions.

NOTES TO DECISIONS

1. Insolvency

In action by judgment creditor of corporation to impress a constructive trust on property conveyed by corporation to defendant officer and majority shareholder, evidence supported finding of financial incapacity of the corporation at the time of the conveyance. *L. N. Tauber* v. *M. Noble* (D.C. Mun. App. 1961, 172 A. 2d 552).

§ 29–903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: *Provided,* That nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations. (As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88–111, § 1(5).)

AMENDMENT

1963—Section 1(5) of act Sept. 3, 1963, amended the section by striking therefrom the last proviso clause.

EFFECTIVE DATE OF 1963 AMENDMENTS

Section 3 of act Sept. 3, 1963 [amending sections 29–903, 29–904, 29–907a, 29–907b, 29–916, 29–927g, 29–933h, 29–933i, 29–936, 29–938d, 29–941, 29–947 and adding section 29–959], provided that: "This Act shall become effective sixty days after the date of its enactment".

POPULAR NAME

Section 2 of act Sept. 3, 1963, cited to text [amending sections 29–903, 29–904, 29–907a, 29–907b, 29–916, 29–927g, 29–933h, 29–933i, 29–936, 29–938d, 29–941, 29–947, and adding section 29–959], provided that: "This Act may be cited as the 'District of Columbia Business Corporation Act Amendments of 1963'."

§ 29–904. General powers.

* * * * *

(h) * * * No corporation formed hereunder shall plead any statutes against usury in any action.

* * * * *

(As amended Sept. 3, 1963, 77 Stat. 136, Pub. L. 88–111, § 1(1).)

AMENDMENT

1963—Section 1(1) of act Sept. 3, 1963, amended subsection (h) by adding the following "No corporation formed hereunder shall plead any statutes against usury in any action."

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–907a. Change of registered office or registered agent.

* * * * *

(e) The registered agent of one or more domestic corporations may change the address of the registered office of such domestic corporation or corporations by filing with the Commissioners a statement setting forth:

(1) the name of the registered agent;

(2) the present address, including street and number, if any, of such registered agent;

(3) the names of the corporation or corporations represented by such registered agent at such address;

(4) the address, including street and number, if any, to which the office of such registered agent is to be changed; and

(5) the date upon which such change will take place.

(f) Such statement shall be executed in duplicate by such registered agent in his individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or vice president and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as prescribed in this chapter:

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office; and

(3) return the other duplicate original to the registered agent.

(g) The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Commissioners or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (As amended Sept. 3, 1963, 77 Stat. 136, Pub. L. 88–111, § 1(2).)

AMENDMENTS

1963—Section 1(2) of act Sept. 3, 1963, amended section by adding subsection (e), (f) and (g).

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–907b. Registered agent as an agent for service.

* * * * *

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office of such corporation in the District, or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Commissioners shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Commissioners shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

* * * * *

(As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88–111, § 1(3).)

AMENDMENTS

1963—Section 1(3) of act Sept. 3, 1963, amended subsection (b) to read as above set out. For comparison with previous subsection (b) see main volume of the code.

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–908g. Certificates representing shares.

* * * * *

(b) Notwithstanding the provisions of section 28:8–204 of the District of Columbia Code, every certificate representing shares the transferability of which is restricted or limited shall state upon the face therof that the transferability of such shares is restricted or limited and upon the face or back thereof shall either set forth a full or summary statement of any such restriction or limitation upon the transferability of such shares or shall state that the corporation will furnish to any shareholder upon request and without charge such full or summary statement.

* * * * *

(As amended Dec. 30, 1963, 77 Stat. 770, Pub. L. 88–243, § 4.)

AMENDMENT

1963—Section 4 of act Dec. 30, 1963, amended subsection (b) by changing the reference to section 28–2915 to the new section 28:8–204.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I, of title 28.

§ 29–916. Board of directors.

* * * * *

Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise. (As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88–111, §1(4).)

AMENDMENTS

1963—Section 1(4) of act Sept. 3, 1963, amended section by adding the sentence above set out relating to compensation of directors.

§ 29–918. Liability of directors in certain cases.

NOTES TO DECISIONS

1. Liability of officers

President of "association" which filed its articles of incorporation that were first rejected but later accepted could be held personally liable on obligation entered into by "association" before certificate of incorporation was issued, and creditor was not estopped from denying existence of corporation because, after certificate of incorporation was issued, he accepted first installment payment on note executed by "association." *M. G. Robertson* v. *E. M. Levy* (D.C. App. 1964, 197 A. 2d 443).

§ 29–921c. Effect of issuance of incorporation.

NOTES TO DECISIONS

1. Starting date of existence

Corporation comes into existence only when certificate of incorporation has been issued, and before certificate issues, there is no corporation de jure, de facto, or by estoppel. *M. G. Robertson* v. *E. M. Levy* (D.C. App 1964, 197 A. 2d 443).

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–927g. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in the District of Columbia, and in every case it shall file with the Commissioners—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of

any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding;

(3) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders; and

(4) a post office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them.

(As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88–111, § 1(6).)

AMENDMENTS

1963—Section 1(6) of act Sept. 3, 1963, amended subsection (b) by striking out "and" in paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon and the word "and" and by adding thereto the paragraph numbered (4).

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

NOTES TO DECISIONS

1. Assets, disposition of

Corporation's transfer of its major league baseball franchise from one location to another was not such disposition of assets as required approval of two-thirds of stockholders, under District of Columbia Law. *H. G. Murphy* v. *Washington American Baseball Club, Inc., et al.* (1961, 293 F. 2d 522, 110 U.S. App. D.C. 334).

§ 29–933h. Change of registered office or registered agent of foreign corporation.

* * * * *

(f) A registered agent of one or more foreign corporations may change the address of the registered office of such foreign corporation or corporations by filing with the Commissioners a statement setting forth:

(1) the name of the registered agent;

(2) the present address, including street and number, if any, of such registered agent;

(3) the names of the corporation or corporations represented by such registered agent at such address;

(4) the address, including street and number, if any, to which the office of such registered agent is to be changed; and

(5) the date upon which such change will take place."

(g) Such statement shall be executed in duplicate by such registered agent in his individual name but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or a vice president and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed:

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office; and

(3) return the other duplicate original to the registered agent.

(h) The change of address of such registered agent as to each corporation named in such statement shall become effective upon the filing of such statement by the Commissioners or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later. (As amended Sept. 3, 1963, 77 Stat. 137, Pub. L. 88–111, § 1(7).)

AMENDMENTS

1963—Section 1(7) of act Sept. 3, 1963, amended the section by adding subsections (f), (g) and (h) thereto.

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–933i. Service of process on foreign corporation.

(a) The registered agent so appointed by a foreign corporation authorized to transact business in the District shall be an agent of such foreign corporation upon whom process against such corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to transact business in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such resigtered agent cannot with reasonable diligence be found at the registered office of such corporation in the District, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Commissioners shall be an agent of such foreign corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to such corporation at its principal office in the State under the laws of which it is organized as the same appears in the records of the Commissioners.

(c) If any foreign corporation shall transact business in the District without a certificate of authority, it shall, by transacting such business, be deemed to have thereby appointed the Commissioners its agent and representatives upon whom any process, notice, or demand may be served. Service shall be made by delivering to and leaving with the Commissioners,

or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail or certified mail addressed to such corporation at the address given in such affidavit.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law. (As amended Sept. 3, 1963, 77 Stat. 138, Pub. L. 88–111, § 1(8).)

AMENDMENTS

1963—Section 1(8) of act Sept. 3, 1963, amended the section to read as above set out. For provisions of section prior to this amendment see section in main volume of the code.

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

NOTES TO DECISIONS

1. Service on Commissioners

District of Columbia statute making service upon officer of foreign corporation transacting business in District without place of business or resident agent therein effectual as to suits growing out of contracts entered into therein and statute providing that foreign corporation transacting business in District without certificate shall be deemed to have appointed commissioners its agents are to be read in pari materia, and, in respect to action on District contract, service on commissioners was valid. *Central Insurance Agency Co., Inc.* v. *Financial Credit Corp., et al.* (1963, 222 F. Supp. 627).

Service was quashed and complaint dismissed in treble damage action against foreign corporation under Clayton Act where plaintiff failed to establish that it had complied with statutory requirement of delivering to and leaving with the Commissioners of District of Columbia, or with any clerk having charge of their office, copies of process. *Curtis Brothers, Inc.* v. *Thomasville Chair Co.* (1961, 292 F. 2d 774, 110 U.S. App. D.C. 281).

§ 29–935. Commissioners—Duties and functions.

DELEGATION OF FUNCTIONS

Org. Ord. No. 101, 54–1980, dated Sept. 1954, and amended Oct. 14, 1954, Nov. 30, 1954, June 10, 1955, Feb. 19, 1960, and May 29, 1962, was superseded by order No. 63–197, dated Jan. 24, 1963. See New Order in appendix to title 1.

§ 29–936. Fees and license taxes, and charges.

* * * * *

(b) The Commissioners shall charge for—

(1) filing articles of incorporation, $20;

(2) filing amendment to articles of incorporation, $20;

(3) filing articles of merger or consolidation, $20;

(4) filing a statement of intent to dissolve, $5;

(5) filing articles of reincorporation, $20;

(6) filing articles of dissolution, $10;

(7) filing statement of change of address of registered office or change of registered agent, or both, $1;

(8) filing statement of the establishment of a series of shares, $5;

(9) filing an application of a foreign corporation for certificate of authority to transact business in the District and issuing a certificate of authority, $20;

(10) filing an application for reservation of a corporate name or for a renewal of reservation, $5;

(11) filing notice of transfer of a reserved corporate name, $5;

(12) filing an application of a foreign corporation for amended certificate of authority to transact business in the District and issuing an amended certificate of authority, $20;

(13) filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the District, $5;

(14) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the District, $20;

(15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $5;

(16) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, $50;

(17) filing any other statement or report, except an annual report, of a domestic or a foreign corporation, $1;

(18) for indexing each document filed, except an annual report, of a domestic or a foreign corporation, $2;

(19) for furnishing a certified copy of any document, instrument, report, or paper relating to a corporation, $5;

(20) filing by a registered agent of corporations of a statement of change of address of such registered agent, $5, plus $1 for each corporation, domestic or foreign, listed in such statement; and

(21) furnishing a certificate as to the status of a corporation, domestic or foreign, or as to the existence or nonexistence of facts relating to corporations, domestic or foreign, such fee as they may, from time to time, determine to be reasonable.

* * * * *

(As amended Sept. 3, 1963, 77 Stat. 139, Pub. L. 88–111, § 1(9).)

AMENDMENTS

1963—Section 1(9) of act Sept. 3, 1963, amended subsection (b) by adding paragraphs (20) and (21) thereto.

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–938d. Reinstatement of proclaimed corporations.

(a) A corporation, the articles of incorporation or certificate of authority of which have been revoked by proclamation, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioners a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided

by this chapter, together with any penalties imposed by this chapter.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commissioners after the period for reservation of the name has expired and if they find that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of the preceding paragraph, the proclaimed corporation shall set forth in its petition for reinstatement its name at the time of issuance of the proclamation of revocation and its new name, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) If the Commissioners find that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, they shall, when all fees, charges, interest, and penalties have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals and any such annual report or reports the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals and any such annual report or reports in their office;

(3) issue a certificate of reinstatement to which they shall affix the other duplicate original;

(4) deliver such certificate of reinstatement and other duplicate original to the corporation or its representative.

(d) Upon the issuance of the certificate of reinstatement, the revocation proceedings theretofore taken as to such corporation by proclamation shall be deemed to be annulled, and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued. (As amended Sept. 3, 1963, 77 Stat. 139, Pub. L. 88–111, § 1(10).)

AMENDMENTS

1963—Section 1(10) of act Sept. 3, 1963, amended the section to read as above set out. For provisions of section prior to this amendment see main volume of the code.

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–941. Effect of nonpayment of fees.

(a) * * * Nothing in this section shall prevent the filing, without the payment of all such fees, charges and penalties, of a written notice of resignation by a registered agent of a corporation, domestic or foreign.

* * * * *

(As amended Sept. 3, 1963, 77 Stat. 140, Pub. L. 88–111, § 1(11).)

AMENDMENT

1963—Section 1(11) of act Sept. 3, 1963, amended subsection (a) by adding thereto the sentence beginning with the word "Nothing" and ending with the word "foreign".

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–947. Action without a meeting.

Any action required or permitted to be taken at a meeting of the shareholders of a corporation or of the board of directors or of any committee thereof may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, or by all of the members of the board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the share holders or the board or the committee. Such consent shall have the same force and effect as a unanimous vote of the shareholders or the board or the committee, as the case may be, and may be stated as such in any article or document filed with the Commissioners under this chapter. (As amended Sept. 3, 1963, 77 Stat. 140, Pub. L. 88–111, § 1(12).)

AMENDMENTS

1963—Section 1(12) of act Sept. 3, 1963, amended the section to read as above set out. For provisions of section prior to this amendment see section in main volume of the code.

EFFECTIVE DATE OF 1963 AMENDMENTS

See note to section 29–903.

§ 29–959. Verification no longer required.

A requirement in this chapter that any instrument be verified by oath need not be complied with after November 2, 1963. A person who signs any instrument delivered to the Commissioners pursuant to this chapter knowing it to contain a misstatement of fact shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500, or by imprisonment not exceeding one year, or both, in the discretion of the court. (Sept. 3, 1963, 77 Stat. 140, Pub. L. 88–111, § 1(13).)

EFFECTIVE DATE

Section 3 of act Sept. 3, 1963, provided: "This Act shall become effective sixty days after the date of its enactment."

Chapter 10.—NONPROFIT CORPORATIONS

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§ 29–1001. Popular name.

This chapter shall be known and may be cited as the "District of Columbia Nonprofit Corporation Act." (Aug. 6, 1962, 76 Stat. 265, Pub. L. 87–569, § 1.)

EFFECTIVE DATE

Section 110 act Aug. 6, 1962 (classified to § 29–1099k), provides as follows: "This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval". [Aug. 6, 1962]

§ 29–1002. Definitions.

As used in this chapter, unless the context otherwise requires, the term—

(a) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(b) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of the District of Columbia, for a purpose or purposes for which a corporation might be organized under this chapter, but shall not include a corporation created by a special Act of Congress.

(c) "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation as permitted in this chapter.

(d) "Articles of incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special Act of Congress, means such special Act and any amendments thereto made by special Act of Congress, or pursuant to general law.

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

(f) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(g) "Board of directors" means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.

(h) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(i) "Commissioners" means the Commissioners of the District of Columbia or the agent or agents designated by them to perform any function vested in the Commissioners by this chapter.

(j) "District" means the District of Columbia.

(k) "The court", except where otherwise specified, means the United States District Court for the District of Columbia. (Aug. 6, 1962, 76 Stat. 266, Pub. L. 87–569, § 2.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1003. Applicability.

(a) The provisions of this chapter relating to domestic corporations shall apply to all corporations organized hereunder or which elect to accept the provisions of this chapter.

(b) The provisions of this chapter relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in the District of Columbia for a purpose or purposes for which a corporation might be organized under this chapter.

(c) No corporation eligible to be formed under this chapter shall be incorporated under any other Act or statute now in force in the District of Columbia except that those organizations eligible to be formed under the Acts or parts of Acts referred to in section 49–303, may be formed under those Acts or part of Acts. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 85–569, § 3.)

EFFECTIVE DATE

See section 29–1099k.

CROSS REFERENCE

For other provisions dealing with nonprofit organizations, see chapters 3, 4, 5, 6 and 8 of title 29, chapter 9 of title 31, and title 32.

§ 29–1004. Purposes.

Corporations may be organized under this chapter for any lawful purpose or purposes including, but not limited to, one or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional, commercial, industrial, business, or trade association; mutual improvement; promotion of the arts; except that cooperative organizations or organizations subject to any of the provisions of the insurance laws of the District may not be organized under this chapter. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 87–569, § 4.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1005. General powers.

Each corporation shall have power—

(a) to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) to sue and be sued, complain and defend, in its corporate name;

(c) to have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(d) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) to lend money to and otherwise assist its employees other than its officers and directors;

(g) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, State, territory, governmental district, or municipality or of any instrumentality thereof;

(h) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

(i) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) to conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this chapter in any part of the world;

(k) to elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(*l*) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation;

(m) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized;

(n) to indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to

which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise;

(o) to cease its corporate activities and surrender its corporate franchise;

(p) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(Aug. 6, 1962, 76 Stat. 267, Pub. L. 87–569, § 5.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1006. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation.

(c) In a proceeding by the Commissioners, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Commissioners to enjoin the corporation from the transaction of unauthorized acts. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87–569, § 6.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1007. Corporate name.

The corporate name—

(a) shall not contain any word or phase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(b) shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation whether for profit or not for profit authorized to transact business or conduct affairs in the District, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or in accordance with the provisions of the District of Columbia Business Corporation Act;

(c) shall be transliterated into letters of the English alphabet, if it is not in English;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress.

(Aug. 6, 1962, 76 Stat. 269, Pub. L. 87–569, § 7.)

REFERENCE IN TEXT

The District of Columbia Business Corporation Act, referred to in text, is set out in chapter 9 of title 29, D.C. Code.

EFFECTIVE DATE

See section 29–1099k.

§ 29–1008. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by any person or corporation, domestic or foreign, by delivering to the Commissioners an application to reserve a specified corporate name, executed by the applicant. If the Commissioners find that the name is available for corporate use, they shall reserve the same for the exclusive use of the applicant for a period of sixty days. Such reservation may be renewed for an additional period of sixty days and for good cause shown such reservation may be further extended for a reasonable period.

(b) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by delivering to the Commissioners a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (Aug. 6, 1962, 76 Stat. 269, Pub. L. 87–569, § 8.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1009. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office, which may be, but need not be, the same as its principal office;

(b) a registered agent, which agent may be either an individual resident of the District of Columbia whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District of Columbia and having an office identical with such registered office.

(Aug. 6, 1962, 76 Stat. 270, Pub. L. 87–569, § 9.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1010. Change of registered office or registered agent.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the office of its registered agent as changed will be identical; and

(7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) A corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a corporation may resign as such agent by delivering written notice thereof, executed in triplicate, to the Commissioners, who shall file one copy thereof in their office and forthwith mail a copy thereof to the corporation at its registered office and another copy to the corporation at its principal office in the District of Columbia as shown by the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or other charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 270, Pub. L. 87–569, § 10.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1011. Registered agent as an agent for service.

(a) The registered agent appointed by a corporation as provided in this chapter shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Commissioners shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them or with any clerk having charge of their office duplicate copies of such process, notice, or demand. In the event that any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87–569, § 11.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1012. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87–569, § 12.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1013. Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 271, Pub. L. 87–569, § 13.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1014. Meetings of members.

(a) Meetings of members may be held at such place within or without the District of Columbia as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the bylaws.

Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, the secretary, the board of directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having at least one-twentieth of the votes entitled to be cast at such meeting. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87–569, § 14.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1015. Notice of members' meetings.

Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten or more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87–569, § 15.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1016. Voting.

(a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the bylaws so provide, voting on all matters, including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.

(d) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted members. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87–569, § 16.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1017. Quorum.

(a) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members having at least one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

(b) Unless otherwise provided by the articles of incorporation or the bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called. (Aug. 6, 1962, 76 Stat. 272, Pub. L. 87–569, § 17.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1018. Board of directors.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the District of Columbia or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87–569, § 18.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1019. Number, election, classification, and removal of directors.

(a) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold

office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election. (Aug. 6, 1962, 76 Stat. 273, Pub. L. 87–569, § 19.)

Effective Date

See section 29–1099k.

§ 29–1020. Vacancies.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the board of directors, though less than a quorum of the board, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87–569, § 20.)

Effective Date

See section 29–1099k.

§ 29–1021. Quorum of directors.

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter or by the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87–569, § 21.)

Effective Date

See section 29–1099k.

§ 29–1022. Committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87–569, § 22.)

Effective Date

See section 29–1099k.

§ 29–1023. Place and notice of directors' meetings.

Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia, and upon such notice as may be prescribed in the bylaws or, where not inconsistent with the bylaws, by resolution of the board of directors. A director's attendance at any meeting shall constitute waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless otherwise provided in the articles of incorporation or the bylaws. (Aug. 6, 1962, 76 Stat. 274, Pub. L. 87–569, § 23.)

Effective Date

See section 29–1099k.

§ 29–1024. Officers.

(a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include one or more vice presidents and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the bylaws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be

determined by resolution of the board of directors not inconsistent with the bylaws. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87–569, § 24.)

§ 29–1025. Removal of officers.

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87–569, § 25.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1026. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the District of Columbia a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney, for any proper purpose at any reasonable time. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87–569, § 26.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1027. Shares of stock and dividends prohibited.

A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members or others as permitted by this chapter. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87–569, § 27.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1028. Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. (Aug. 6, 1962, 76 Stat. 275, Pub. L. 87–569, § 28.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1029. Incorporators.

Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, vertifying, and delivering in duplicate to the Commissioners articles of incorporation for such corporation. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87–569, § 29.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1030. Articles of incorporation.

(a) The articles of incorporation shall set forth—

(1) the name of the corporation;

(2) the period of duration, which may be perpetual;

(3) the purpose or purposes for which the corporation is organized;

(4) if the corporation is to have no members, a statement to that effect;

(5) if the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting, or denying the right to vote;

(6) if the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed; or that the manner of such election or appointment of such directors shall be provided in the bylaws;

(7) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) the address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(9) the number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify;

(10) the name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (Aug. 6, 1962, 76 Stat. 276, Pub. L. 87–569, § 30.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1031. Filing of articles of incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioners.

(b) If the Commissioners find that the articles of incorporation conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of incorporation to which they shall affix the other duplicate original;

(4) deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

(Aug. 6, 1962, 76 Stat. 276, Pub. L. 87–569, § 31.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1032. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87–569, § 32.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1033. Organization meetings.

(a) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States at the call of a majority of the directors so named for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the members, in which event the bylaws shall be adopted by the members), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting: *Provided, however,* That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least five days' notice, for such purposes as shall be stated in the notice of meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87–569, § 33.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1034. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided,* That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87–569, § 34.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1035. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the meeting be an anual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(e) Any number of amendments may be submitted and voted upon at any one meeting. (Aug. 6, 1962, 76 Stat. 277, Pub. L. 87–569, § 35.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1036. Articles of amendment.

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) the amendment so adopted;

(c) where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(d) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

(Aug. 6, 1962, 76 Stat. 278, Pub. L. 87–569, § 36.)

§ 29–1037. Filing of articles of amendment.

(a) Duplicate originals of the articles of amendment shall be delivered to the Commissioners.

(b) If the Commissioners find that the articles of amendment conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of amendment to which they shall affix the other duplicate original;

(4) deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 278, Pub. L. 87–569, § 37.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1038. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (Aug. 6, 1962, 76 Stat. 278, Pub. L. 87–569, § 38.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1039. Procedure for merger.

Any two or more domestic corporations subject to the provisions of this chapter may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth—

(a) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(Aug. 6, 1962, 76 Stat. 279, Pub. L. 87–569, § 39.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1040. Procedure for consolidation.

Any two or more domestic corporations subject to the provisions of this chapter may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth—

(a) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

(Aug. 6, 1962, 76 Stat. 279, Pub. L. 87–569, § 40.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1041. Approval of merger or consolidation.

A plan of merger or consolidation shall be approved in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members.

(c) At each such meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(e) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (Aug. 6, 1962, 76 Stat. 279, Pub. L. 87–569, § 41.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1042. Articles of merger or consolidation.

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and the corporate seal of each such corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (a) a statement setting forth the date of the meeting of members at which the plan was approved, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (b) a statement that such amendment was approved by a consent in writing signed by all members entitled to vote with respect thereto;

(3) where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was approved and a statement of the fact that such plan received the vote of a majority of the directors in office.

(b) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Commissioners.

(c) If the Commissioners find that such articles conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger or a certificate of consolidation to which they shall affix the other duplicate original;

(4) deliver the certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto, to the surviving or new corporation, as the case may be, or its representative.

(Aug. 6, 1962, 76 Stat. 280, Pub. L. 87–569, § 42.)

Effective Date

See section 29–1099k.

§ 29–1043. Effective date of the merger or consolidation.

Upon the issuance of the certificate of merger, or the certificate of consolidation by the Commissioners, the merger or consolidation shall be effected.

(Aug. 6, 1962, 76 Stat. 280, Pub. L. 87–569, § 43.)

Effective Date

See section 29–1099k.

§ 29–1044. Effect of merger or consolidation.

When such merger or consolidation has been effected—

(a) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or other property, or any interest therein, vested in any of such corporations shall not revert unless required by the terms of the gift, bequest, or devise, or be in any way impaired by reason of such merger or consolidation;

(e) such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgement as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation;

(f) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(Aug. 6, 1962, 76 Stat. 280, Pub. L. 87–569, § 44.)

Effective Date

See section 29–1099k.

§ 29–1045. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State or country under which each such foreign corporation is organized.

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State or country under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any

State or country other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to carry on its affairs in the District of Columbia, and in every case it shall deliver to the Commissioners, who shall file—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) a post office address to which the Commissioners may mail a copy of any service of process, notice, or demand against the corporation that may be served on them.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (Aug. 6, 1962, 76 Stat. 281, Pub. L. 87–569, § 45.)

Effective Date

See section 29–1099k.

§ 29–1046. Sale, lease, exchange, or mortgage of assets.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members.

(c) At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(e) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 282, Pub. L. 87–569, § 46.)

Effective Date

See section 29–1099k.

§ 29–1047. Voluntary dissolution.

A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87–569, § 47.)

Effective Date

See section 29–1099k.

Cross Reference

See also chapter 8, title 29.

§ 29–1048. Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution adopted as provided in this chapter. (Aug. 6, 1962, 76 Stat. 283, Pub. L. 87–569, § 48.)

Effective Date

See section 29–1099k.

§ 29–1049. Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights the board of directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87–569, § 49.)

Effective Date

See section 29–1099k.

§ 29–1050. Revocation of voluntary dissolution proceedings.

A corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners, as hereinafter provided, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Commissioners, notice of such revocation shall be given to them in writing. (Aug. 6, 1962, 76 Stat. 284, Pub. L. 87–569, § 50.)

Effective Date

See section 29–1099k.

§ 29–1051. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth—

(a) the name of the corporation;

(b) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(d) that all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter;

(f) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(Aug. 6, 1962, 76 Stat. 285, Pub. L. 87–569, § 51.)

Effective Date

See section 29–1099k.

§ 29–1052. Filing of articles of dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioners.

(b) If the Commissioners find that such articles of dissolution conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of dissolution to which they shall affix the other duplicate original;

(4) deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter. (Aug. 6, 1962, 76 Stat. 285, Pub. L. 87–569, § 52.)

Effective Date

See section 29–1099k.

§ 29–1053. Involuntary dissolution.

(a) A corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Commissioners in the name of the District of Columbia when it is made to appear to the court that—

(1) the franchise of the corporation was procured through fraud; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(3) the corporation has failed for ninety days to appoint and maintain a registered agent as provided in this chapter; or

(4) the corporation has failed for ninety days after change of its registered office or registered agent to deliver to the Commissioners a statement of such change.

(b) At least thirty days before any action for the involuntary dissolution of a corporation shall be filed by the Commissioners, they shall notify the corporation by certified or registered mail addressed to such corporation at its registered office a notice of their intention to file such suit and the reason therefor. If, before action is filed, the corporation as the case may be shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this chapter, or deliver to the Commissioners the required statement of change of registered agent, the Commissioners shall not file an action against such corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of the preceding subsection the corporation shall as the case may be appoint or maintain a registered agent as provided in this chapter, or shall deliver to the Commissioners the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87–569, § 53.)

Effective Date

See section 29–1099k.

Cross Reference

See also chapter 8, title 29.

§ 29–1054. Venue and process.

In every action for the involuntary dissolution of a corporation hereinbefore provided, summons shall issue and be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioners shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioners shall cause a copy of such notice to be mailed by registered or certified mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioners of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioners, unless the decree is against the corporation and such cost is collected from it. (Aug. 6, 1962, 76 Stat. 286, Pub. L. 87–569, § 54.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1055. Jurisdiction of court to liquidate assets and affairs of corporation.

The United States District Court for the District of Columbia shall have full power to liquidate the assets and affairs of a corporation—

(a) in any action by a member or director when it is made to appear—

(1) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(3) that the corporate assets are being misapplied or wasted; or

(4) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor—

(1) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) it shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

(Aug. 6, 1962, 76 Stat. 287, Pub. L. 87–569, § 55.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1056. Procedure in liquidation of corporation by court.

(a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in actives substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

(d) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (Aug. 6, 1962, 76 Stat. 287, Pub. L. 87–569, § 56.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1057. Qualification of receivers.

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized

to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the District of Columbia, and shall in all cases give such bond as the court may direct with such sureties as the court may require. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87–569, § 57.)

§ 29–1058. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (Aug. 6, 1962, 76 Stat. 288, Pub. L. 87–569, § 58.)

§ 29–1059. Discontinuance of liquidation proceedings.

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the received to redeliver to the corporation all its remaining property and assets. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87–569, § 59.)

§ 29–1060. Decree of dissolution.

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87–569, § 60.)

Effective Date

See section 29–1099k.

§ 29–1061. Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of the court to cause a certified copy of the decree to be delivered to the Commissioners, who shall file the same. No fee shall be charged by the Commissioners for the filing thereof. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87–569, § 61.)

§ 29–1062. Deposits in registry of court.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited in the registry of the court and shall be paid over to such person or to his legal representative upon proof satisfactory to the court of his right thereto. If any portion thereof remain in the registry after ten years from the date of deposit, it shall escheat to the District of Columbia and shall be paid into the Treasury of the United States for the credit of the said District. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87–569, § 62.)

Effective Date

See section 29–1099k.

§ 29–1063. Survival of remedy after dissolution.

The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. (Aug. 6, 1962, 76 Stat. 289, Pub. L. 87–569, § 63.)

§ 29–1064. Admission of foreign corporation.

(a) A foreign corporation to which this chapter is applicable shall procure a certificate of authority from the Commissioners before it conducts affairs in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in the District any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) Without excluding other activities which may not constitute conducting affairs in the District of Columbia, a foreign corporation shall not be considered to be conducting affairs in the District for the purposes of the chapter, by reason of conducting an isolated transaction completed in thirty days and not in the course of a number of repeated transactions of like nature or by reason of any one or more of the following activities in the District:

(1) maintaining or defending any action or suit or any administrative or arbitration proceed-

ing, or effecting the setlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) creating evidences of debt, mortgages, or liens on real or personal property;

(5) collecting its debts, taking security for the same, or enforceing any rights in property securing the same.

(Aug. 6, 1962, 76 Stat. 290, Pub. L. 87–569, § 64.)

Effective Date

See section 29–1099k.

§ 29–1065. Powers of foreign corporation.

(a) No foreign corporation to which this chapter is applicable shall conduct in the District any affairs which may not be conducted by a corporation organized under this chapter.

(b) A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (Aug. 6, 1962, 76 Stat. 290, Pub. L. 87–569, § 65.)

Effective Date

See section 29–1099k.

§ 29–1066. Corporate name of foreign corporation.

No certificate of authority shall be issued to a foreign corporation—

(a) which has a name the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, or a name, the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or in accordance with the provisions of the District of Columbia Business Corporation Act;

(b) unless the corporate name of such corporation is in English, or is transliterated into letters of the English alphabet if it is not in English.

(Aug. 6, 1962, 76 Stat. 290, Pub. L. 87–569, § 66.)

Reference in Text

The District of Columbia Business Corporation Act, referred to in text, is set out in chapter 9 of title 29 of the D.C. Code.

Effective Date

See section 29–1099k.

§ 29–1067. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs in the District of Columbia shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in the District until it has changed its name to a name which is available to it under the laws of the District. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87–569, § 67.)

§ 29–1068. Application for certificate of authority.

A foreign corporation, in order to procure a certificate of authority to conduct affairs in the District of Columbia, shall make application therefor to the Commissioners, which application shall set forth—

(a) the name of the corporation and the State or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address, including street and number, if any, of the principal office of the corporation in the State or country under the laws of which it is incorporated;

(d) the address, including street and number, if any, of the proposed registered office of the corporation in the District, and the name of its proposed registered agent in the District at such address;

(e) a brief statement of the purposes it proposes to pursue in conducting its affairs in the District;

(f) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(g) such additional information as may be necessary or appropriate in order to enable the Commissioners to determine whether such corporation is entitled to a certificate to conduct affairs in the District.

Such application shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (Aug. 6, 1962, 76 Stat. 291, Pub. L. 87–569, § 68.)

Effective Date

See section 29–1099k.

§ 29–1069. Filing of application for certificate of authority.

(a) There shall be delivered to the Commissioners—

(1) duplicate originals of the application of the corporation for a certificate of authority;

(2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State or country under the laws of which it is incorporated.

(b) If the Commissioners find that such application conforms to law, they shall, when all fees and

charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file in their office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) issue a certificate of authority to conduct affairs in the District to which they shall affix the other duplicate original application;

(4) deliver the certificate of authority, together with the duplicate original of the application affixed thereto, to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 291, Pub. L. 87–569, § 69.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1070. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Commissioners, the corporation shall have the right to conduct affairs in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such authority as provided in this chapter. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87–569, § 70.)

§ 29–1071. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in the District shall have and continuously maintain in the District—

(a) a registered office which may be, but need not be, the same as its principal office in the District;

(b) a registered agent, which agent may be either an individual resident in the District whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, having a business office identical with such registered office.

(Aug. 6, 1962, 76 Stat. 292, Pub. L. 87–569, § 71.)

§ 29–1072. Change of registered office or registered agent of foreign corporation.

(a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by its board of directors, or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a foreign corporation may resign as such agent by delivering a written notice thereof, executed in duplicate, to the Commissioners who shall file one copy thereof in their office and forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated as the same appears in the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (Aug. 6, 1962, 76 Stat. 292, Pub. L. 87–569, § 72.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1073. Service of process on foreign corporation.

(a) The registered agent so appointed by a foreign corporation authorized to conduct affairs in the District shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation, may be served. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to conduct affairs in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked,

then the Commissioners shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated, as the same appears in the records of the Commissioners.

(c) If any foreign corporation shall conduct affairs in the District without a certificate of authority, it shall by conducting such affairs be deemed to have thereby appointed the Commissioners its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivery to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation, and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered or certified mail, addressed to such corporation at the address given in such affidavit.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (Aug. 6, 1962, 76 Stat. 293, Pub. L. 87–569, § 73.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1074. Amendment to articles of incorporation of foreign corporation.

Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in the District are amended, such foreign corporation shall, within ninety days after such amendment becomes effective, file with the Commissioners a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in the District, nor authorize such corporation to conduct affairs in the District under any other name than the name set forth in its certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87–569, § 74.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1075. Merger of foreign corporation.

Whenever a foreign corporation authorized to conduct affairs in the District shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within ninety days after such merger becomes effective, deliver to the Commissioners a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to pursue in the District. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87–569, § 75.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1076. Amended certificate of authority.

(a) A foreign corporation authorized to conduct affairs in the District shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioners.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the delivering of duplicate originals thereof to the Commissioners, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. (Aug. 6, 1962, 76 Stat. 294, Pub. L. 87–569, § 76.)

§ 29–1077. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to conduct affairs in the District may withdraw from the District upon procuring from the Commissioners a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Commissioners an application for withdrawal.

(b) The application for withdrawal shall state—

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) that the corporation is not conducting affairs in the District;

(3) that the corporation surrenders its authority to conduct affairs in the District;

(4) that the corporation revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the District during the time the corporation was authorized to conduct affairs in the District may thereafter

be made on such corporation by service thereof on the Commissioners;

(5) a post office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them.

(c) The application for withdrawal shall be executed by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87–569, § 77.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1078. Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioners. If the Commissioners find that such application conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of withdrawal to which they shall affix the other duplicate original;

(4) deliver the certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, to the corporation or its representative.

(b) Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87–569, § 78.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1079. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to conduct affairs in the District may be revoked by the Commissioners when they find that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or

(2) the corporation has continued to exceed or has abused the authority conferred upon it by this chapter; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this chapter; or

(4) the corporation has failed for a period of ninety days to appoint and maintain a registered agent in the District; or

(5) the corporation has failed for ninety days after change of its registered office or registered agent to file with the Commissioners a statement of such changes; or

(6) the corporation for a period of two years has not conducted any affairs in the District; or

(7) the corporation has failed to file with the Commissioners a duly certified copy of each amendment to its articles of incorporation within ninety days after such amendment becomes effective; or

(8) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioners unless (1) they shall have given the corporation not less than thirty days' notice thereof by certified or registered mail addressed to such corporation at its principal office in the state or country under the laws of which such corporation is organized, as the same appears in the records of the Commissioners or at its registered office in the District, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or shall fail to appoint a registered agent in the District, or shall fail to file the required statement of change of registered office or registered agent, or shall fail to file a statement showing that it has conducted affairs in the District within a period of two years, or shall fail to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (Aug. 6, 1962, 76 Stat. 295, Pub. L. 87–569, § 79.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1080. Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Commissioners shall—

(1) issue a certificate of revocation in duplicate;

(2) file one of such certificates in their office;

(3) mail the other such certificate to such corporation at its registered office in the District or to its principal place of business as the same appears in the records of the Commissioners.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in the District shall cease. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87–569, § 80.)

§ 29–1081. Application to foreign corporations conducting affairs on the effective date of this chapter.

Foreign corporations conducting affairs in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within six months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this Act for conducting affairs without a certificate of authority. (Aug. 6, 1962, 76 Stat. 296, Pub. L. 87–569, § 81.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1082. Conducting affairs without certificate of authority.

(a) No foreign corporation which is conducting affairs in the District without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in the District, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of the District.

(c) A foreign corporation which conducts affairs in the District without a certificate of authority shall be liable to the District for the years or parts thereof during which it conducted affairs in the District without a certificate of authority, in an amount equal to all fees, penalties, and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in the District as required by this chapter and thereafter filed all reports required by this chapter; and, in addition thereto, it shall be liable for a penalty to be assessed by the Commissioners of not in excess of $200. The Commissioners shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87–569, § 82.)

Effective Date

See section 29–1099k.

§ 29–1083. Annual report of domestic and foreign corporations.

(a) Each domestic corporation, and each foreign corporation authorized to conduct affairs in the District, shall prepare an annual report setting forth—

(1) the name of the corporation and the State or country under the laws of which it is incorporated;

(2) the address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the State or country under the laws of which it is incorporated;

(3) a brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in the District;

(4) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) such annual report shall be made on forms prescribed and furnished by the Commissioners, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, treasurer, or assistant treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87–569, § 83.)

Effective Date

See section 29–1099k.

§ 29–1084. Filing of annual report of domestic and foreign corporations.

Such annual report of a domestic or foreign corporation shall be delivered to the Commissioners on or before the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be delivered to the Commissioners on or before the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Commissioners. Proof to the satisfaction of the Commissioners that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Commissioners find that such report conforms to law, they shall file the same. If they find that it does not so conform, they shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Commissioners in sufficient time to be filed prior to the first day of July of the year in which it is due. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87–569, § 84.)

Effective Date

See section 29–1099k.

§ 29–1085. Effect of failure to pay annual report fee or to file annual report.

If any corporation incorported under this chapter, or any corporation which has elected to accept this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this chapter, or fail or refuse to file any annual report as required by this chapter for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87–569, § 85.)

Effective Date

See section 29–1099k.

§ 29–1086. Proclamation of revocation.

(a) On the second Monday in September of each year, the Commissioners shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this chapter for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioners shall be filed in their office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, as in this chapter provided with respect to dissolved corporations.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to pay, satisfy, and discharge their liabilities and obligations and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, as in this chapter provided with respect to dissolved corporations, but not for the purpose of continuing to conduct the affairs for which such corporation shall have been organized: *Provided, however,* That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued a body corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87–569, § 86.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1087. Penalty for conducting affairs after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87–569, § 87.)

§ 29–1088. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Commissioners that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioners are authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, to good standing with like effect as if such proclamation of revocation, as to such corporation, had not been issued. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87–569, § 88.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1089. Reservation of name of proclaimed corporation.

The Commissioners shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87–569, § 89.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1090. Reinstatement of proclaimed corporations.

(a) A domestic corporation, the articles of incorporation of which have been revoked, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioners a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter. The Commissioners, if they find that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this chapter, shall file them in their office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commission-

ers after the period for reservation of the name has expired and if they find that the name is not available for corporate use pursuant to the provisions of this chapter, then, in addition to complying with the provisions of the preceding paragraph the proclaimed corporations shall set forth in its petition for reinstatement its name at the time its articles of incorporation were proclaimed void and the new name by which the corporation will thereafter be known, which shall be a name available for corporate use pursuant to the provisions of this chapter.

(c) A foreign corporation whose certificate of authority has been revoked shall, upon reentering the District, comply with all of the requirements of law applicable to an original application for a certificate of authority, including the payment of the filing fee for filing an application for a certificate of authority, but it need not file again a copy of its articles of incorporation or any amendment thereof that is then on file with the Commissioners. After the revocation of the certificate of authority of a foreign corporation, the Commissioners shall retain the articles of incorporation and amendments theretofore filed and the original application for a certificate of authority for a period of ten years. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87–569, § 90.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1091. Penalties imposed upon corporations.

Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of $5 to be assessed by the Commissioners. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87–569, § 91.)

§ 29–1092. Fees for filing documents and issuing certificates.

The Commissioners shall charge and collect for—

(a) filing articles of incorporation and issuing a certificate of incorporation, $10;

(b) filing articles of amendment and issuing a certificate of amendment, $5;

(c) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $5;

(d) filing a statement of change of address or registered office or change of registered agent, or both, $1;

(e) filing articles of dissolution, $1;

(f) filing an application for reservation of a corporate name or for a renewal of reservation, $5;

(g) filing notice of transfer of a reserved corporate name, $5;

(h) filing statement of election to accept this chapter and issuing certificate of acceptance, $10;

(i) filing an application of a foreign corporation for a certificate of authority to conduct affairs in the District and issuing a certificate of authority, $10;

(j) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in the District and issuing an amended certificate of authority, $5;

(k) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in the District, $5;

(*l*) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in the District, $5;

(m) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $1;

(n) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, $10;

(*o*) filing any other statement or report, including an annual report, of a domestic or foreign corporation, $1;

(p) indexing each document filed, except an annual report, $2;

(q) furnishing a certified copy of any document, instrument, or paper relating to a corporation, $5;

(r) furnishing a certificate as to the existence or nonexistence of a fact relating to a corporation, $1;

(s) The Commissioners are authorized to make regulations providing for reasonable fees for other services not listed in this section.

(Aug. 6, 1962, 76 Stat. 300, Pub. L. 87–569, § 92.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1093. Commissioners, duties and functions.

(a) The Commissioners shall have the power and authority reasonably necessary to enable them to administer this chapter efficiently and to perform the duties therein imposed upon them.

(b) The Commissioners shall be charged with the administration and enforcement of this chapter. Said Commissioners are authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

(c) The Commissioners may transfer any or all of the functions vested in them by this chapter to any agent designated by them pursuant to law. It shall be the duty of any officer or agency of the government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioners pursuant to this chapter.

(d) Every certificate and other document or paper executed by the Commissioners, in pursuance of any authority conferred upon them by this chapter, and sealed with the seal prescribed by subsection (c) of section 29–935, and all copies of such papers, as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by them and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Commissioners are authorized to make, modify, and enforce such regulations as they may deem necessary to carry out the provisions of this chapter, prescribe penalties for the violation of any

such regulation not exceeding a fine of $300 or imprisonment for ninety days, or both, and to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by them as they may deem appropriate. (Aug. 6, 1962, 76 Stat. 301, Pub. L. 87–569, § 93.)

REFERENCE IN TEXT

The Classification Act of 1949, as amended, referred to in subsection (b), is set out in Title 5, chapter 21, of the U.S. Code.

§ 29–1094. Appeal from commissioners.

(a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them, give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the United States District Court for the District of Columbia by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to conduct affairs in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the United States District Court for the District of Columbia by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the United States District Court for the District of Columbia under this section in review of any ruling or decision of the Commissioners may be taken as in other civil actions. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87–569, § 94.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1095. Certificates and certified copies to be received in evidence.

All certificates issued by the Commissioners in accordance with the provisions of this chapter, and all copies of documents filed in their office in accordance with the provisions of this chapter when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioners under the seal of their office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87–569, § 95)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1096. Forms to be furnished by commissioners.

All reports required by this chapter to be filed in the office of the Commissioners shall be made on forms which shall be prescribed and furnished by the Commissioners. Forms for all other documents to be filed in the office of the Commissioners shall be furnished by the Commissioners on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (Aug. 6, 1961, 76 Stat. 302, Pub. L. 87–569, § 96.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1097. Greater voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87–569, § 97.)

§ 29–1098. Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice. (Aug. 6, 1962 76 Stat. 303, Pub. L. 87–569, § 98.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099. Action by members or directors without a meeting.

Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Commissioners under this chapter. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87–569, § 99.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099a. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87–569, § 100.)

§ 29–1099b. Procedure to elect to accept chapter.

Any corporation which is organized and existing under the laws of the District of Columbia or under any special Act of Congress on the date this chapter takes effect, and which is organized not for profit, and is without authority to issue shares of stock, and is organized for a purpose or purposes for which a corporation may be organized under the provisions of this chapter may elect to avail itself of the provisions of this chapter in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation accept this chapter and directing that the question of such acceptance be submitted to a vote at a meeting of the members having voting rights which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposal to accept this chapter shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposal to elect to accept this chapter shall be adopted upon receiving at least two thirds of the vote entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the election to accept this chapter may be adopted at a meeting of the board of directors upon receiving the vote of at least a majority of the directors in office. (Aug. 6, 1962, 76 Stat. 303, Pub. L. 87–569, § 101.)

Effective Date

See section 29–1099k.

§ 29–1099c. Statement of election to accept this chapter.

The statement of election to accept this chapter shall be executed in duplicate by the corporation by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary, or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) a statement by the corporation that it has elected to accept this chapter;

(c) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of the members at which the election to accept this chapter was adopted; that a quorum was present at such meeting, and that such acceptance received the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such election to accept this chapter was adopted by a consent, in writing, signed by all members entitled to vote with respect thereto;

(d) where there are no members or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this chapter was adopted, and the statement of the fact that such acceptance received the vote of a majority of the directors in office;

(e) the purpose or purposes (which may be different from its existing purposes) which it will thereafter pursue, and shall not include any purpose prohibited to a corporation organized under this chapter;

(f) if the corporation has no members, a statement to that effect;

(g) if the corporation has members, there shall be set forth—

(1) the number of classes of members;

(2) if there is more than one class of members, a statement of the qualifications and rights and limitations of each class of members;

(3) if members, or any class or classes of members, are not entitled to vote, a statement to that effect;

(4) if members, or any class or classes of members are entitled to vote, a statement setting forth the voting rights and of any limitation or limitations thereof of members or of any class or classes thereof;

(h) any other provision, not inconsistent with law, or this chapter, for the regulation of the internal affairs of the corporation;

(i) the address, including street and number, if any, of its registered office in the District of Columbia and the name of its registered agent at such address;

(j) the names and respective addresses, including street and number, if any, of its officers and directors;

(k) it shall not be necessary to set forth in the statement of election to accept this chapter any of the corporate purposes enumerated in this chapter. Whenever a provision in the statement of election to accept this chapter is inconsistent with a bylaw, the provision of the statement of election to accept this chapter shall be controlling.

(Aug. 6, 1962, 76 Stat. 304, Pub. L. 87–569, § 102.)

Effective Date

See section 29–1099k.

§ 29–1099d. Filing of statement of election to accept this chapter.

(a) Duplicate originals of the statement of election to accept this chapter shall be delivered to the Commissioners.

(b) If the Commissioners find that the statement of election to accept this chapter conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of acceptance, to which they shall affix the other duplicate original;

(4) deliver such certificate of acceptance with the other duplicate original affixed thereto to the corporation or its representative.

(Aug. 6, 1962, 76 Stat. 304, Pub. L. 87–569, § 103.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099e. Effect of certificate of acceptance.

(a) Upon the issuance of a certificate of acceptance as hereinbefore provided, the election of the corporation to accept this chapter shall become effective and the existence of the corporation shall be continued under this chapter and such certificate shall be conclusive evidence that all conditions precedent required to be performed under this chapter have been compiled with and that the corporation has elected to accept the provisions of this chapter and the corporation shall be entitled to and be possessed of all of the privileges and powers and franchises and be subject to all of the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter; but no contract, debt, claim, duty, liability, or obligation of any corporation to which a certificate of acceptance has been issued shall be affected or impaired in any way nor shall the rights of creditors or any liens upon the property of such corporation be affected or impaired by such election to accept this chapter.

(b) Neither the issuance of a certificate of acceptance to a corporation created under the provisions of a special Act of Congress, nor the adoption of any amendment pursuant to this chapter, shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of the special Act of Congress under which it was created or any amendment made thereto, nor enlarge any right, power, or privilege granted any such corporation by such special Act except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporation organized under this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87–569, § 104.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099f. Actions to be in name of District of Columbia.

All civil actions under this chapter which the Commissioners are authorized to commence, and all prosecutions for violations of the provisions of this chapter or of regulations promulgated under the authority of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioners to perform the functions prescribed for the Corporation Counsel in this chapter. (Aug. 6, 1962, 76 Stat. 305, Pub. L. 87–569, § 105.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099g. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87–569, § 106.)

§ 29–1099h. Chapter not to affect Internal Revenue Code of 1954.

Nothing in this chapter shall be construed as repealing or affecting any provision of the Internal Revenue Code of 1954. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87–569, § 107.)

REFERENCE IN TEXT

The Internal Revenue Code of 1954 is set out in Title 26, U.S. Code.

§ 29–1099i. Effect of invalidity of part of this chapter.

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87–569, § 108.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099j. Effect of false statement.

A person who signs any instrument delivered to the Commissioners pursuant to this chapter, knowing it to contain a misstatement of fact, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment for not exceeding one year, or by both such fine and imprisonment. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87–569, § 109.)

EFFECTIVE DATE

See section 29–1099k.

§ 29–1099k. Effective date.

This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87–569, § 110.)

§ 29–1099*l*. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (Aug. 6, 1962, 76 Stat. 306, Pub. L. 87–569, §§ 111.)

TITLE 30.—DOMESTIC RELATIONS

Chap. Sec.
3. Uniform Support 30–301

Chapter 1.—MARRIAGE

§ 30–101. Prohibitions—Marriages void ab initio.

NOTES TO DECISIONS

Common-law marriage 1
Laches and estoppel 6
Previous undissolved marriage 7

1. Common-law marriage

Common-law marriage is recognized in District of Columbia. *E. Matthews* v. *T. Britton, Deputy Commissioner etc.* (1962, 303 F. 2d 408, 112 U.S. App. D.C. 397).

If parties agreed to be husband and wife in ignorance of impediment to lawful matrimony, removal of impediment results in common-law marriage between parties if they have continued to cohabit and live together as husband and wife; the same result obtains even if parties have knowledge of impediment at time that they agree to be married. *Id.*

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Id.*

6. Laches and estoppel

Annulment action was not barred by laches, where evidence supported allegation of complaint that plaintiff did not learn of invalidity of divorce from prior wife until immediately before filing complaint. *M. G. Sears* v. *J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Court of equity, in determining whether to interpose bar of equitable estoppel in action to annul marriage, must consider all factors of case, parties involved, effect of ultimate decision on third parties not before court, nature of rights sought to be vindicated, and public policy. *Id.*

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife, to deny validity of marriage to second wife. *Id.*

7. Previous undissolved marriage

Where common-law marriage had not been terminated by death or decree of divorce, attempted ceremonial marriage in Maryland of common-law husband to another woman was void in District of Columbia. *I. M. Lee* v. *G. M. Lee and G. V. Lee* (D.C. App. 1964, 201 A. 2d 873).

§ 30–104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

NOTES TO DECISIONS

Laches and estoppel 2
Capable of contracting marriage 6

2. Laches and estoppel

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife to deny validity of marriage to second wife. *M. G. Sears* v. *J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

6. Capable of contracting marriage

In statute providing that no annulment proceedings can be instituted by person who, being "fully capable of contracting a marriage," has knowingly and willfully contracted any marriage declared illegal by statutes, quoted phrase refers to person with intrinsic legal capacity and does not allude to extrinsic impediments to valid marriage. *M. G. Sears* v. *J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Chapter 2.—PROPERTY RIGHTS

§ 30–201. Married women—Power to dispose of separate property—Under 21 years of age.

Subject to provisions of section 18–201a, married women shall hold all their property of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as husbands have the power to dispose of their property, and no more; except that no disposition of her real or personal property, or any portion therof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85–244, § 8; Sept. 14 1961, 75 Stat. 517, Pub. L. 87–246, § 6.)

AMENDMENTS

1961—Act Sept. 14, 1961, 75 Stat. 517, Pub. L. 87–246, § 6, amended this section by striking out the words "of subsection (b)". This amendment was made to conform the section to the provisions of § 18–201a, which was amended by the same act eliminating subsection (b).

EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18–101, 18–201a, 18–204, 18–211 and 30–201] shall become effective six months after the date of enactment of this Act."

POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18–101, 18–201a, 18–211, 18–204 and 30–201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

CROSS REFERENCE

Dower rights of husband and wife, see § 18–201a.

Chapter 3.—UNIFORM SUPPORT

[This chapter was chapter 16 of former Title 11 of the Code]

Sec.
30–301. Purpose—Effective date.
30–302. Definitions.
30–303. Remedies additional to those now existing.
30–304. Extent of duties of support.
30–305. Remedies of a State furnishing support or institutional care.
30–306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.
30–307. Contents of the complaint—Verification.
30–308. Representation of plaintiff by Corporation Counsel or private counsel.
30–309. Complaint on behalf of a minor—Who may bring.
30–310. Duty of court when District of Columbia is initiating State.
30–311. Costs and fees—Waiver of payment.
30–312. Jurisdiction by arrest.

Sec.
30-313. Information agent—Corporation Counsel designated as.
30-314. Duty of the court when District of Columbia is responding State.
30-315. Order of support—Bond—Contempt.
30-316. Copies of orders to be transmitted to initiating State.
30-317. Additional duties of the court—Receive and disburse payment.
30-318. Testimony of spouse—Competency of.
30-319. Application of payments—Crediting on account of other support orders.
30-320. Support of illegitimate children.
30-321. Effect of participation in proceeding.
30-322. Appeals.
30-323. Separability of provisions.
30-324. Appropriations authorized.

§ 30-301. Purpose—Effective date.

The following provisions to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law in respect thereto, shall be in effect in the District of Columbia on and after the effective date of this chapter. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 1.)

EFFECTIVE DATE

Section 26 of act July 10, 1957, provided that: "This Act [adding this chapter] shall take effect sixty days after appropriations therefor become available."

EFFECT OF REORGANIZATION PLAN NO. 5

Section 25 of act July 10, 1957, provided that: "Where any provision of this Act [this chapter] refers to an office or agency abolished under the provisions of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824) [set out in Appendix to Title 1, Administration], such reference shall be deemed to be to the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this Act [this chapter] shall be construed as a limitation on the authority vested in the Commissioners by such Reorganization Plan."

§ 30-302. Definitions.

As used in this chapter, unless the context requires otherwise—

(a) "State" includes any State, Territory, or possession of the United States and the Commonwealth of Puerto Rico and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(b) "Initiating State" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "Responding State" means any State in which a proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(d) "Court" means the Domestic Relations Branch of the Municipal Court for the District of Columbia and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(e) "Duty of support" includes: (1) any duty of support imposed by statute or by common law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; (2) any duty of reimbursement imposed by law for moneys expended by a State or a political subdivision or an agency thereof for support, including institutional care; and (3) the duty imposed by section 11-1620.

(f) "Dependent" means any person who is in need of and entitled to support from a person legally liable for such support.

(g) "Plaintiff" means any person or any State or political subdivision or agency thereof, commencing a proceeding pursuant to this or a similar reciprocal law, whether on his or its own behalf, or on behalf of a dependent as herein defined.

(h) "Defendant" means any person owing a duty of support, against whom a proceeding is commenced pursuant to this chapter or a similar reciprocal Act. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 2.)

NOTES TO DECISIONS

Counsel fees 1
Desertion by mother 2
Jurisdiction 3
Law governing 4

1. Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

2. Desertion by mother

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *Edmonds v. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

3. Jurisdiction

When wife's reciprocal enforcement of support proceeding was commenced in New York, that court had primary duty under statute to decide if wife had made prima facie showing of need for support for children and that they were entitled to support from nonresident father: *D. Prager* v. *J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

Valid, existing New York decree which on divorce of parties imposed obligation on father to support children whose custody was awarded to mother made prima facie case in another New York court in reciprocal enforcement of support proceeding against father who was served with process in District of Columbia. *Id.*

An action by mother under Uniform Reciprocal Enforcement of Support Act against father for support of their minor children was properly dismissed where there was an outstanding order in United States District Court for support of the children in an action previously brought by the mother against the father, which court retained jurisdiction for modification in event of change of circumstances, so that there was nothing for Domestic Relations Branch of Court of General Sessions to act upon. *N. E. Y. Jackson* v. *F. B. Jackson* (D.C. App. 1963, 187 A. 2d 704).

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, this chapter, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

4. Law governing

When mother's petition in reciprocal enforcement of support proceeding was forwarded to District of Columbia, latter court had to determine under local statute whether father owed duty of support and, if so, amount he should be required to pay. *D. Prager* v. *J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law

of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia, this chapter on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *Edmonds* v. *Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

§ 30–303. Remedies additional to those now existing.

The civil remedies herein provided are in addition to and not in substitution for any other remedies. (July 10, 1957, 71 Stat. 286, Pub. L. 85–94, § 3.)

NOTES TO DECISIONS

1. Decree, does not bar action for support

Award for separate maintenance and support for minor children obtained under Reciprocal Enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figliozzi* v. *J. Figliozzi* (D.C. Mun. App. 1961, 173 A. 2d 904).

§ 30–304. Extent of duties of support.

Duties of support enforcible under this chapter are those imposed under the laws of any State in which the defendant was present during the period for which support is sought, or in which the dependent was present when the failure to support commenced or where the dependent is when the failure to support continues. The defendant shall be presumed to have been present in the responding State during the period for which support is sought until otherwise shown. (July 10, 1957, 71 Stat. 286, Pub. L. 85–94, § 4.)

NOTES TO DECISIONS

Controlling law 1
Jurisdiction 2
Law governing 3
Liability when mother deserts 4
Obligor-obligee relationship 5
Support, duties of 6

1. Controlling law

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia on transmission to the District of Columbia of petition filed by mother under similar act in Vriginia to compel support for minor children. *Edmonds* v. *Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

2. Jurisdiction

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act, this chapter. *Cobbe, a minor etc.* v. *Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

3. Law governing

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc.* v. *Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

4. Liability when mother deserts

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *A. Edmonds* v. *H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

5. Obligor-obligee relationship

In proceedings brought by child in District of Columbia, against her father, who was in Florida, under Uniform Reciprocal Enforcement of Support Act, this chapter, where mother in District of Columbia had custody, but due to mother's illness decree was entered by Florida court changing custody to father and abating father's support payments, and later child, with father's consent, returned to live with mother, the child showed an obligor-obligee relationship sufficient to establish, under law of District of Columbia, a prima facie case for support. *Cobbe, a minor etc.* v. *Cobbie* (D.C. Mun. App. 1960, 163 A. 2d 333).

6. Support, duties of

That mother and her second husband allegedly turned her sons against their father did not relieve father of duty of supporting sons where sons had not been adopted by second husband. *D. Prager* v. *J. Smith, etc.* (D.C. App. 1963, 195 A. 2d 257).

Natural father's duty to support his minor children is not simply moral obligation but a duty imposed by law and is not relieved by personal disputes, real or fanciful, between contesting parents. *Id.*

§ 30–305. Remedies of a State furnishing support or institutional care.

Whenever any State or a political subdivision or agency thereof has furnished, or is furnishing support or institutional care to a dependent, it shall for the purposes of securing reimbursement of past expenditures and of obtaining continuing support, have the same right to invoke the provisions of this chapter as the dependent to whom such support or care was furnished, or is being furnished. (July 10, 1957, 71 Stat. 286, Pub. L. 85–94, § 5.)

§ 30–306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.

Proceedings to enforce duties of support initiated in the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant. Jurisdiction of all proceedings under this chapter shall be vested in the domestic relations branch of the municipal court for the District of Columbia, which branch in exercising the jurisdiction vested in the court by this chapter, shall have all of the power and authority which is vested in the court by sections 11–752, 11–758 to 11–770, 16–210, 16–220, 16–416 and 32–786. (July 10, 1957, 71 Stat. 286, Pub. L. 85–94, § 6.)

NOTES TO DECISIONS

Counsel fees 1
Jurisdiction 2
Right to support 3

1. Counsel fees

Father's deliberate and unjustified failure to comply with New York order for child support, which forced legal custodian to file suit for their protection, warranted award of counsel fees to custodian's court-assigned attorney in reciprocal support case. *D. Prager* v. *J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

2. Jurisdiction

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband

for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, this chapter, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

3. Right to support

Husband had duty to support wife after they had separated, in absence of proof that separation was due to her misconduct. *W. Novak* v. *G. J. Novak* (D.C. App. 1963, 190 A. 2d 266).

Wife may be entitled to award of support payments from husband from whom she has separated even if separation was due to wife's misconduct, but amount awarded will be less than would otherwise be the case. *Id.*

Fact that wife who was separated from husband had no income of her own but was depending entirely on her parents for food and shelter established her need for support, and need was not altered, except perhaps as to extent thereof, by fact that she had a potential earning capacity. *Id.*

Full inquiry into financial status of both parties should be made in action by wife for support after separation from her husband, and husband should be required to make full, detailed and accurate disclosure of his assets and income. *Id.*

§ 30–307. Contents of the complaint—Verification.

The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and of the dependents for whom the duty of support is sought to be enforced, and all other pertinent facts necessary to enable the court to determine whether a duty of support exists on the part of the defendant. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number. (July 10, 1957, 71 Stat. 286, Pub. L. 85–94, § 7.)

§ 30–308. Representation of plaintiff by Corporation Counsel or private counsel.

In any instance in which the Corporation Counsel of the District of Columbia is satisfied that a public support burden has been incurred or is threatened, it shall be his duty to represent the plaintiff in any proceedings arising under this chapter or a similar reciprocal Act. In all other cases the court may, in its discretion, appoint private counsel to represent the plaintiff: *Provided,* That the plaintiff may be represented by private counsel in any proceedings under this chapter at his own expense. (July 10, 1957, 71 Stat. 286, Pub. L. 85–94, § 8.)

NOTES TO DECISIONS

1. Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act, this chapter, by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

§ 30–309. Complaint on behalf of a minor—Who may bring.

A complaint on behalf of a minor dependent may be brought by any person or agency as next friend of the minor, regardless of whether such person or agency has been appointed guardian of such minor. (July 10, 1957, 71 Stat. 287, Pub. L. 85–94, § 9.)

NOTES TO DECISIONS

Jurisdiction 1
Law governing 2
Prior decree 3

1. Jurisdiction

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act, this chapter. *Cobbe, a minor etc.* v. *Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

2. Law governing

In proceedings under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc.* v. *Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

3. Prior decree

A person may institute proceedings for a minor for support under Uniform Reciprocal Enforcement of Support Act, this chapter, regardless of fact that a decree, granting custody to another, is outstanding. *Cobbe, a minor etc.* v. *Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

§ 30–310. Duty of court when District of Columbia is initiating State.

If the court finds that a complaint initiated in the District of Columbia sets forth facts from which it appears that the defendant owes a duty of support, as defined in this chapter, and that a court of a responding State may obtain jurisdiction of the defendant, it shall so certify and shall cause to be transmitted to the court in the responding State, three copies of its certificate, three certified copies of the complaint, and three copies of this chapter. (July 10, 1957, 71 Stat. 287, Pub. L. 85–94, § 10.)

NOTES TO DECISIONS

1. Law governing

In proceedings under Uniform Reciprocal Enforcement of Support Act, this chapter, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding state must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. *Cobbe, a minor etc.* v. *Cobbe* (D.C. Mun. App. 1960, 163 A. 2d 333).

§ 30–311. Costs and fees—Waiver of payment.

The complaint, when initiated in the District of Columbia, shall be accompanied by such fees and costs as may be required by the court as well as by the court of the responding State: *Provided,* That

the court whether the District of Columbia be the initiating or responding State, may in its discretion direct that payment or prepayment of any part or all fees and costs incurred in the District of Columbia be waived upon the filing of an affidavit representing that the plaintiff is unable to pay the same: *Provided further,* That the court shall direct waiver of payment or prepayment of such fees and costs whenever the plaintiff is a State having a similar provision for waiver of fees, or a political subdivision or agency thereof. Nothing in this section shall be construed to deprive the court of its discretion to assess costs and fees. (July 10, 1957, 71 Stat. 287, Pub. L. 85–94, § 11.)

§ 30–312. Jurisdiction by arrest.

When the court has reason to believe that the defendant may flee the jurisdiction of the responding State, it may (a) as the court of the initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State, or (b) as the court of a responding State, obtain the body of the defendant by any appropriate process. (July 10, 1957, 71 Stat. 287, Pub. L. 85–94, § 12.)

§ 30–313. Information agent—Corporation Counsel designated as.

The Corporation Counsel of the District of Columbia is hereby designated as the reciprocal information agent under this chapter and it shall be his duty to transmit a copy of this chapter and any subsequent changes therein to the State information agency of every other State which has adopted this or a substantially similar Act, and to maintain a registry of the names and addresses of the courts having jurisdiction of such proceedings in other States. (July 10, 1957, 71 Stat. 287, Pub. L. 85–94, § 13.)

§ 30–314. Duty of the court when the District of Columbia is responding State.

(a) When the court receives from the court of an initiating State certified copies of a complainant or other proceedings containing the essential allegations of a complaint, under whatever name it may be known, and a certificate similar to that required by section 11–1610, it shall docket the cause and refer the matter to the Corporation Counsel, or to private counsel, if appropriate, for such further action as may be necessary to obtain jurisdiction of the defendant in order to carry out the provisions of this chapter.

(b) If the court is unable to obtain jurisdiction of the defendant due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, and shall hold the case pending receipt of more accurate information or an amended complaint from the court in the initiating State. (July 10, 1957, 71 Stat. 287, Pub. L. 85–94, § 14.)

NOTES TO DECISIONS

1. Conflict of laws

Where District of Columbia Reciprocal Enforcement of Support Act had no section providing that, where District was receiving jurisdiction, and respondent controverted petition, judge should stay hearing and transmit to initiating state a transcript of clerk's minutes showing denials entered by respondent, trial judge correctly refused to apply such section of initiating state to proceedings in District. *D. Prager* v. *J. Smith etc.* (D.C. App. 1963, 195 A. 2d 257).

§ 30–315. Order of support—Bond—Contempt.

If the court finds a duty of support as defined by this chapter it may order the defendant to pay such amounts under such terms and conditions as the court may deem proper. The court may require the defendant to furnish recognizance in the form of a cash deposit or bond, and may punish a defendant who violates any order of the court to the same extent as is provided by law for contempt in any other suit or proceeding cognizable by the court. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 15.)

NOTES TO DECISIONS

Abuse of discretion 1
Preference of legitimate children 2

1. Abuse of discretion

Award of $60 every two weeks for maintenance and support of wife and children, under Uniform Reciprocal Enforcement of Support Act, was not abuse of discretion, although award would disable husband from meeting obligations to his common law children with whom he lived. *E. Miner* v. *M. Miner* (D.C. App. 1963, 192, A. 2d 811).

On record presented, order requiring father to make monthly payments for support of child who was living in Florida in custody of father's former wife was proper, and the amount within discretionary limits. *M. Brickey* v. *L. Weinstein* (D.C. Mun. App. 1961, 173 A, 2d 372).

In a proceeding under the Reciprocal Enforcement of Support Act, this chapter, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding state. *Menetrez* v. *Menetrez* (D.C. Mun. App. 1959, 147 A, 2d 772).

2. Preference of legitimate children

As between claims of legitimate and illegitimate children, children who are the result of a marital relationship are entitled to support from their father before and in preference to those born through an illicit association. *C. J. Jefferson* v. *D. J. Jefferson* (D.C. App. 1963, 192 A, 2d 813).

Trial judge, in making an award for support of wife and six minor children properly refused to consider as part of the valid expenditures of husband monthly payments he was required to make for support of five illegitimate children. *Id.*

§ 30–316. Copies of orders to be transmitted to initiating State.

The court shall cause to be transmitted to the court of the initiating State a certified copy of all orders of support or for reimbursement therefor entered by it. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 16.)

§ 30–317. Additional duties of the court—Receive and disburse payments.

The court shall have the additional duty, which may be carried out by the clerk of the court, to receive payments made pursuant to order of the court by defendants within the District of Columbia or transmitted by the court of a responding State, and to disburse the same in accordance with the order of the court, and upon request of the court of an initiating State shall furnish to that court a certified statement of all payments received and disbursed in a particular case. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 17.)

§ 30–318. Testimony of spouse—Competency of.

In all proceedings arising under this chapter, husband and wife shall be competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 18.)

§ 30–319. Application of payments—Crediting on account of other support orders.

No order for support entered by the court in any proceeding arising under this chapter shall supersede any previous order of support entered in a divorce or separate maintenance action, or any other proceedings, but the amounts for a particular period paid pursuant to either order, when verified, shall be credited against amounts accruing or accrued for the same period under both. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 19.)

§ 30–320. Support of illegitimate children.

The natural father of an illegitimate child shall have the duty to support such child until the age of sixteen years (a) when paternity has been established by judicial process, or (b) when paternity has been directly acknowledged by the putative father under oath. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 20.)

§ 30–321. Effect of participation in proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding. (July 10, 1957, 71 Stat. 288, Pub. L. 85–94, § 21.)

§ 30–322. Appeals.

Any party aggrieved by any final or interlocutory order or judgment entered in the court shall have the same right of appeal available in respect to any final or interlocutory order or judgment entered in the civil branch of the municipal court for the District of Columbia. (July 10, 1957, 71 Stat. 289, Pub. L. 85–94, § 22.)

CROSS REFERENCE

Right of appeal to District of Columbia Court of Appeals for the District of Columbia, see § 11–741.

§ 30–323. Separability of provisions.

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (July 10, 1957, 71 Stat. 289, Pub. L. 85–94, § 23.)

§ 30–324. Appropriations authorized.

Appropriations for expenses necessary for carrying out the purposes of this chapter, including additional personal services for the court and for the Office of the Corporation Counsel, are hereby authorized. (July 10, 1957, 71 Stat. 289, Pub. L. 85–94, § 24.)

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

Sec.
31–631b. Dual compensation—Exceptions.
31–634. Teacher's salary while on leave for educational purposes—Deductions.
31–635. Employees other than elementary and secondary school teachers—Salary while on leave—Deductions—Temporary employees.

§ 31–631. Double salaries—School teachers and employees in District of Columbia.

Section 301 of the Dual Compensation Act shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocation schools. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1; Aug. 19, 1964, 78 Stat. 491, 493, Pub. L. 88–448, title IV, §§ 401(i), 402(a)(17)(18).

AMENDMENTS

Section 401(i) of act Aug. 19, 1964, amended section by striking out reference to the applicability of section 6, of the Act of May 10, 1916, and inserted in lieu thereof the phrase "Section 301 of the Dual Compensation Act." Portions of section 301 of the Dual Compensation Act are set out in section 31–631b. For remainder of provisions of section 301, see 5 U.S. Code 3105.

EFFECTIVE DATE OF AMENDMENT AND REPEALS

Sec. 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

REPEALS

Section 402(a)(17)(18) of the act of Aug. 19, 1964, repealed the provisions in the section relating to the applicability of section 6 of the Act of May 10, 1916, to "employees of the community center department of the public schools of the District of Columbia" and "employees of the school garden department of the public schools of the District of Columbia."

§ 31–631a. Same—Custodial employees in District of Columbia.

Section 301 of the Dual Compensation Act shall not apply to the custodial employees who are in the employ of the Board of Education of the District of Columbia when such employees are performing work required of them in school buildings during the time these buildings are used for nonrecreational official purposes by any Federal agency or department of the District of Columbia government other than the Board of Education, in accordance with the rules of the Board of Education governing the use of school buildings and grounds, including their use for day or evening schools; and nothing therein contained shall be deemed to prevent any custodial employee from receiving in addition to his pay, salary, or compensation as an employee of the Board of Education of the District of Columbia any other pay, salary, or compensation at a rate not in excess of the rate of pay received as an employee of the Board of Education, for services which may have been rendered subsequent to May 31, 1941, or which may on and after July 1, 1942 be rendered to any Federal agency or department of the District of Columbia government other than the Board of Education, during its use of school buildings under the jurisdiction of the Board of Education of the District of Columbia. (July 1, 1942, 56 Stat. 467, ch. 467; Aug. 19, 1964, 78 Stat. 491, Pub. L. 88–448, title IV, § 401(k).)

AMENDMENT

1964—Section 401(k) of act Aug. 19, 1964, amended section by striking the reference to the applicability of section 6 of the act of May 10, 1910, and inserting in lieu thereof the phrase "Section 301 of the Dual Compensation Act". Portions of section 301 of the Dual Compensation Act is set out herein as section 31–631b. For remainders of the section of section 301, see 5 U.S. Code 3105.

EFFECTIVE DATE OF AMENDMENT

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

§ 31–631b. Dual Compensation—Exceptions.

(a) Except as provided by subsections (b), (c), (d), and (e) of this section, civilian personnel shall not be entitled to receive basic compensation from fore than one civilian office for more than an aggregate of forty hours of work in any one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the United States Civil Service Commission, subject to the supervision and control of the President, is authorized to prescribe and issue regulations under which exceptions may be made to the restrictions in subsection (a) of this section whenever it is determined by appropriate authority that such exceptions are warranted on the ground that personal services otherwise cannot be readily obtained.

(c) Unless otherwise authorized by law, no money appropriated by any Act shall be available for payment to any person of salary from more than one civilian office if the aggregate amount of the basic compensation from such offices exceeds the sum of $2,000 per annum, and if (1) one of such salaries is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives or (2) one of such offices is under the Office of the Architect of the Capitol.

(d) Subsection (a) of this section does not apply to—

(1) compensation on a when-actually-employed basis received from more than one consultant or expert position if such compensation is not received for the same hours of the same day;

(2) compensation consisting of fees paid on other than a time basis;

(3) compensation received by teachers of the public schools of the District of Columbia for employment in a civilian office during the summer vacation period;

(7) compensation within the purview of any of the following provisions of law:

(A) section 31–631, relating to teachers in the public schools of the District of Columbia who also are employed in night schools and vacation schools;

(C) section 31–631a, relating to custodial employees of the Board of Education of the District of Columbia;

(e) With respect to the compensation of persons serving on the effective date of this section in more than one position under properly authorized appointments, subsection (a) of this section shall not apply for the duration of the appointment or appointments concerned.

(Aug. 19, 1964, 78 Stat. 488, Pub. L. 88–448, title III, § 301.)

EFFECTIVE DATE

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

CODIFICATION

This section is a composite of those portions of the "Dual Compensation Act," of Aug. 19, 1964, Pub. L. 88–448, § 301, as are deemed applicable to the District of Columbia. For the remainder of the section see 5 U.S. Code 3105.

SABBATICAL YEAR

§ 31–634. Teachers' salary while on leave for educational purposes—Deductions.

Any employee in the salary class of elementary and secondary school teachers whose salary is fixed by section 31–1501, who is granted leave of absence for educational purposes under the provisions of sections 31–632 to 31–637, shall receive compensation during the period of such leave of absence, such compensation to be equal to one-half of the salary which he would have received and paid in the same manner as if he were on active duty during the period of such leave of absence reduced by (1) the amount of contributions which he is required to make to the retirement fund as provided by section 31–721, (2) any contributions which he may elect to make to group life insurance as provided by section 5 U.S.C. 2091(a), and (3) any contributions which he may elect to make to any health benefits plan as provided by section 5 U.S.C. 3002. (June 12, 1940, 54 Stat. 349, ch. 342, § 3; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88–472, § 1.)

AMENDMENTS

1964—Section 1 of act Aug. 21, 1964, amended section to read as above set out. For provisions of section prior to amendment see main volume of code.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of act Aug. 21, 1964, provided, "This Act [amending sections 31–634, 31–635 and 31–636] shall take effect on and after July 1, 1963."

§ 31–635. Employees other than elementary and secondary school teachers—Salary while on leave—Deductions—Temporary employees.

Any employee whose salary is fixed by section 31–1501, other than employees in the salary class of elementary and secondary school teachers, who is granted leave of absence for educational purposes under sections 31–632 to 31–637 shall receive compensation during the period of such leave of absence, such compensation to be equal to one-half of the salary which he would have received and paid in the same as if he were on active duty during the period of such leave of absence or equal to the largest amount to which any employee in the salary class of elementary and secondary school teachers would be entitled if given such educational leave, whichever is less, either payment to be reduced by (1) the amount of contributions which the employee is required to make to the retirement fund as provided by section 31–721, (2) any contributions which he may elect to make to group life insurance as provided by section 5 U.S.C. 2091(a), and (3) any contributions which he may elect to make to any health benefits plan as provided by section 5 U.S.C. 3002: *Provided*, That during the period of the leave of absence of any employee who is an administrative or supervisory officer, the Board of Education, on the recommendation of the superintendent of schools, may authorize the temporary assignment to his position of any teacher or officer who serves under such officer on leave of absence: *And provided further*, That the position of the teacher or officer so assigned may be filled during the period of such absence by a qualified temporary employee. (June 12, 1940, 54 Stat. 349, ch. 342, § 4; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88–472, § 2.)

AMENDMENTS

1964—Section 2 of act Aug. 21, 1964, amended section to read as above set out. For provisions of section prior to amendment see main volume of code.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of act Aug. 21, 1964, provided, "This Act [amending sections 31–634, 31–635 and 31–636] shall take effect on and after July 1, 1963".

§ 31–636. Inclusion of sabbatical year for promotion and retirement purposes.

The employee who takes leave of absence with part pay for educational purposes under the provisions of sections 31–632 to 31–637 shall be construed as in active service, and periods of service for salary increment purposes and for retirement purposes, and the pay which the employee would have received had leave not been taken shall be used in computing retirement annuities. (June 12, 1940, 54 Stat. 350, ch. 342, § 5; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88–472, § 3.)

AMENDMENTS

1964—Section 3 of act Aug. 21, 1964, struck out "teacher or officer" in two places and inserted in lieu the word "employee".

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of act Aug. 21, 1964, provided, "This Act [amending sections 31–634, 31–635 and 31–636] shall take effect on and after July 1, 1963".

Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

Sec.
31–725b. Annuity increases granted by act Oct. 24, 1962—Effective date.
31–739a. Price index—Definition.
31–739b. Adjustment of annuities on basis of price index—Computation.

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

§ 31–725. Computation of annuity—Options.

* * * * *

(b) Any teacher retiring under the provisions of section 31–723 or 31–724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to his or her surviving widow or widower designated by such teacher at time of retirement equal to 55 per centum of such life annuity. The life annuity of the teacher making such election, excluding any increase because of retirement under section 31–724, shall be reduced by 2½ per centum of so much thereof as does not exceed $3,600 and by 10 per centum of so much thereof as exceeds $3,600. The annuity of such widow or widower shall begin on the first day of the month immediately following the month in which the death of the retired teacher occurs or the first day of the month following the widow's or widower's attainment of age fifty, whichever is the later, and such annuity or any right thereto shall terminate upon his or her death or remarriage.

* * * * *

(As amended Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87–881, title II, § 203(a).)

AMENDMENTS

1962—Section 203(a) of act Oct. 24, 1962, amended subsection (b)(7) by changing "50 per centum" to "55 per centum" and by changing $2,400 to $3,600.

LIMITATIONS OF AMENDMENTS MADE BY ACT OCT. 24, 1962

Section 205 of act Oct. 24, 1962, provides in part as follows: "The amendments made by section 203 [amendments to sections 31–725 and 31–729] shall not apply in the case of employees retired or otherwise separated prior to the date of enactment of this Act [Oct. 24, 1962], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if these amendments had not been enacted."

PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 31–721 to 31–739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31–725b, 31–739a and 31–739b, amending §§ 31–725 and 31–729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

§ 31–725b. Annuity increases granted by act Oct. 24, 1962—Effective date.

(a) The annuity of each person who, on the effective date, is receiving or entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund shall be increased by 5 per centum of the amount of such annuity.

(b) The annuity of each person who receives or is entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund commencing during the period which begins on the day following the effective date of this section and ends five years after such date, shall be increased in accordance with the following table:

If the annuity commences between—	The annuity shall be increased by—
January 2, 1963, and December 31, 1963	4 per centum.
January 1, 1964, and December 31, 1964	3 per centum.
January 1, 1965, and December 31, 1965	2 per centum.
January 1, 1966, and December 31, 1966	1 per centum.

(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee was so increased.

(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The limitation contained in the next to the last sentence of section 31–725(c)(1), shall not be effective on and after the effective date of this section.

(f) The increases provided by this section shall take affect on the effective date of this section, except that any increase under subsection (b) or (c) shall take effect on the beginning date of the annuity.

(g) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar. (Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87–881, title II, § 201.)

EFFECTIVE DATE

Section 205 of act Oct. 24, 1962, provided that this section "shall take effect on January 1, 1963."

LIMITATIONS REFERRED TO IN SUBSECTION (e)

The limitations are contained in section 31–725, subsection (c)(1) and reads as follows: "Such increase in annuity shall not exceed the sum necessary to increase such annuity exclusive of annuity purchased by voluntary contributions under this section, to $4,104."

PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 31–721 to 31–739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31–725b, 31–739a and 31–739b, amending §§ 31–725 and 31–729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

§ 31–729. Deferred annuity — Refunds — Deposit of amount withdrawn—Annuity to survivors—Determination of dependency and disability.

* * * * *

(b)(1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia and is survived by a widow, or dependent widower, such widow or dependent widower shall be paid an annuity beginning the first day of the month following the death of the teacher, equal to 55 per centum of the amount of an annuity computed as provided in section 31–725(a) with respect to such teacher: *Provided,* That such payments or any right thereto shall cease upon the death or remarriage of the widow, or dependent widower, or upon the widower's becoming capable of self-support.

(2) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia, or after having retired subsequent to March 6, 1952 under section 31–723 or section 31–724, and is survived by a widow or dependent widower and a child or children, such widow or dependent widower shall be paid an immediate annuity terminable upon death, remarriage, or attainment of age fifty. The annuity payable to the widow or dependent widower of such teacher shall be equal to 55 per centum of the amount of an annuity computed as provided in section 31–725(a) with respect to such teacher. The annuity payable to the widow or dependent widower of such annuitant shall be equal to 55 per centum of the amount of the annuity, which such annuitant was receiving at the time of his death, excluding any portion thereof purchased by voluntary contributions under section 31–721, or, if such annuitant had elected a reduced annuity under the provisions of section 31–725(b), 55 per centum of the annuity which such annuitant would have received if he had not made such election.

(3) If any teacher to whom this subchapter applies shall die after completing five years of service in the public schools of the District of Columbia or after having retired under the provisions of section 31–723 or section 31–724 and is survived by a wife or husband, each surviving child who received more than one-half of his support from the teacher shall be paid an anuity equal to the smallest of (a) 40 per centum of the teacher's average salary divided by the number of children, (b) $600, or (c) $1,800 divided by the number of children. If such teacher is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 50 per centum of the teacher's average salary divided by the number of children, (b) $720, or (c) $2,160 divided by the number of children. The child's annuity shall commence on the first day of the month following the teacher's death, and such annuity granted under this Act or any right thereto shall terminate on the last day of the month before (1) his attaining age eighteen unless incapable of self-support, (2) his becoming capable of self-support after age eighteen, (3) his marriage, or (4) his death, except that the annuity of a child who is a student as described in subsection (c)(2) shall terminate on the last day of the month before (A) his marriage, (B) his death, (C) his ceasing to be such a student, or (D) his attaining age twenty-one. Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

* * * * *

(c) As used in this section—

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least two years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means an unmarried child, including a dependent stepchild or an adopted child, under the age of eighteen years, or such unmarried child who because of physical or mental disability is incapable of self-support, or such unmarried child between eighteen and twenty-one years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child whose twenty-first birthday occurs prior to July 1 or after August 31 of any calendar year, and while he is regularly pursuing such a course of study or training, shall be deemed for the purposes of this paragraph and subsection (b)(3) to have attained the age of twenty-one on the first day of July following such birthday. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed four months and if he shows to the satisfaction of the Commissioners that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim.

* * * * *

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85–46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87–881, title II, § 203 (b), (c), (d), (e); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88–575, § 202.)

AMENDMENTS

1964—Section 202 of act Sept. 2, 1964, amended the third sentence of subsection (b)(3) by striking "on the day after the employee dies", and inserting in lieu, "on the first day of the month following the teacher's death."

Section 203(b) of act Oct. 24, 1962, struck out "one-half" and inserted in lieu thereof "55 per centum of" in subsection (b)(1).

Section 203(c) struck out "one-half" in three places and inserted "55 per centum of" in two places and "55

per centum" in the third place in subsection (b)(2).

Section 203(d)(1) amended the third sentence of subsection (b)(3) to read as above set out.

Section 203(d)(2) enacted the provision set out as note entitled, "Teachers' Retirement and Annuity Fund".

Section 203(e) amended subsection (c)(2) by changing the period at the end of sentence to a comma and adding the matter beginning with the words "or such unmarried child".

EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

Section 205 of act, Sept. 2, 1964, provided: "The provisions of this title [amending sections 31–1501, 31–729, 31–1531, and 31–1542] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

LIMITATIONS OF AMENDMENTS MADE BY ACT OCT. 24, 1962

Section 205 of act Oct. 24, 1962, provides in part as follows: "The amendments made by section 203 [amendments to sections 31–725 and 31–729] shall not apply in the case of employees retired or otherwise separated prior to the date of enactment of this Act [Oct. 24, 1962], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if these amendments had not been enacted."

PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 37–721 to 31–739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31–725b, 31–739a and 31–739b, amending §§ 31–725 and 31–729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

TEACHERS' RETIREMENT AND ANNUITY FUND

Section 203(d)(2) of act Oct. 24, 1962, referring to the provisions of the amendments made to the third sentence of subparagraph (b)(3) above set out provides as follows: "Notwithstanding any other provision of law, the benefits resulting from enactment of this amendment shall be paid from the teachers' retirement and annuity fund."

CROSS REFERENCE

For provisions computing increases for childrens and deceased annuitants see section 31–739b(b)(3).

§ 31–739a. Price index—Definition.

Whenever used in sections 31–721 to 31–739b the term "price index" shall mean the annual average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics. (Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87–881, title II, § 202.)

PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provisions of law, the benefits made payable under sections 31–721 to 31–739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31–725b, 31–739a, and 31–739b, amending §§ 31–725 and 31–729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

§ 31–739b. Adjustment of annuities on basis of price index—Computation.

(a) After January 1, 1964, and after each succeeding January 1, the Commissioners of the District of Columbia shall determine the per centum change in the price index from the later of 1962 or the year preceding the most recent cost-of-living adjustment to the latest complete year. On the basis of such Commissioners' determination, the following adjustments shall be made:

(1) Effective April 1, 1964, if the change in the price index from 1962 to 1963 shall have equaled a rise of a least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2, 1963, shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

(2) Effective April 1 of any year other than 1964 after the price change shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2 of the preceding year shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

(b) Eligibility of an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) Effective from the date of the first increase under this section, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 31–729(b)(3), which annuity commenced the day after the annuitant's death, shall be increased as provided in subsection (a)(1) or (a)(2) if the commencing date of annuity to the annuitant was earlier than January 2 of the year preceding the first increase.

(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 31–729(b)(3)), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

(3) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 31–729(b)(3), the items $600, $720, $1,800, and $2,160 appearing in section 31–729(b)(3) shall be increased by the total per centum increase allowed and in force under this section, and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 31–729(b)(3) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death. Effective from the date of the first increase under this section, the provisions of this paragraph shall apply as if such first increase were in effect with respect to computation of a child's annuity under section 31–729(b)(3) which commenced between January 2 of the year preceding the first increase and the effective date of the first increase.

(c) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(d) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar. (Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87–881, title II, § 202.)

PAYMENT OF BENEFITS PROVIDED BY ACT OCT. 24, 1962

Section 204 of act Oct. 24, 1962, provides as follows: "Notwithstanding any other provision of law, the benefits made payable under sections 31–721 to 31–739b, as amended, by reason of the enactment of this title [title II, enacting §§ 31–725b, 31–739a, and 31–739b, amending §§ 31–725 and 31–729] shall be paid from the District of Columbia teachers' retirement and annuity fund."

Chapter 10.—GALLAUDET COLLEGE

§ 31-1011. Education of colored deaf-mute children of District.

NOTES TO DECISIONS

4. Segregation

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al.* v. *Board of Education of Topeka et al.* (1954, 347 U.S. 483, reargued, 349 U.S. 394).

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al.* v. *Sharpe et al.* (1954, 347 U.S. 497).

Chapter 11.—MISCELLANEOUS

§ 31-1110. Education of colored children.

NOTES TO DECISIONS

1. Racial discrimination

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al.* v. *Sharpe et al.* (1954, 347 U.S. 497).

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al.* v. *Board of Education of Topeka et al.* (1954, 347 U S. 483, reargued, 349 U.S. 294).

§ 31-1112. Proportionate amount of school moneys to be set apart for colored schools.

NOTES TO DECISIONS

1. Racial discrimination

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al.* v. *Board of Education of Topeka et al.* (1954, 347 U.S. 483, reargued, 349 U.S. 294).

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al.* v. *Sharpe et al.* (1954, 347 U.S. 497).

§ 31-1113. Facilities for educating colored children to be provided.

NOTES TO DECISIONS

1. Racial discrimination

Racial discrimination in public education is unconstitutional, and all provisions of Federal, State, or local law requiring or permitting such discrimination must yield to this principle. *Brown et al.* v. *Board of Education of Topeka et al.* (1954, 347 U.S. 483, reargued, 349 U.S. 294).

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. *Bolling et al.* v. *Sharpe et al.* (1954, 347 U.S. 497).

Chapter 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

SUBCHAPTER I.—SALARY SCHEDULES

§ 31-1501. Salaries of teachers, school officers and other employees—Service steps.

The following are the salary schedules for teachers, school officers, and certain other employees of the Board of Education of the District of Columbia whose positions are included therein:

Salary class and position	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8	Service step 9
Class 1	$26,000								
Superintendent.									
Class 2	22,000								
Deputy superintendent.									
Class 3	15,200	$15,485	$15,770	$16,055	$16,340	$16,625	$16,910	$17,195	$17,480
Assistant superintendent.									
President, teachers college.									
Class 4	13,450	13,735	14,020	14,305	14,590	14,875	15,160	15,445	15,730
Director, curriculum.									
Dean, teachers college.									
Class 5:									
Group A, bachelor's degree	11,800	12,065	12,330	12,595	12,860	13,125	13,390	13,655	13,920
Group B, master's degree	12,300	12,565	12,830	13,095	13,360	13,625	13,890	14,155	14,420
Group C, master's degree plus 30 credit hours	12,500	12,765	13,030	13,295	13,560	13,825	14,090	14,355	14,620
Chief examiner.									
Director, food services.									
Director, industrial and adult education.									
Executive assistant to superintendent.									
Psychiatrist.									
Class 6:									
Group B, master's degree	11,865	12,130	12,395	12,660	12,925	13,190	13,455	13,720	13,985
Group C, master's degree plus 30 credit hours	12,065	12,330	12,595	12,860	13,125	13,390	13,655	13,920	14,185
Assistant to assistant superintendent (elementary schools).									
Assistant to assistant superintendent (junior and senior high schools).									
Principal, senior high shcool.									
Principal, junior high school.									
Principal, elementary school.									
Principal, vocational high school.									
Principal, Americanization school.									
Principal, boys' junior-senior high school.									
Principal, Capitol Page School.									
Principal, health school.									
Principal, laboratory school.									
Principal, veterans high school.									
Assistant to assistant superintendent (general research, budget, and legislation).									
Assistant to assistant superintendent (pupil appraisal, study, and attendance).									
Director, elementary education (supervision and instruction).									
Director, health, physical education, athletics, and safety.									
Executive assistant to deputy superintendent.									

Salary class and position	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8	Service step 9
Class 7:									
Group B, master's degree	10,990	11,255	11,520	11,785	12,050	12,315	12,580	12,845	13,110
Group C, master's degree plus 30 credit hours	11,190	11,455	11,720	11,985	12,250	12,515	12,780	13,045	13,310
Director, elementary education (administration).									
Director in elementary education.									
Director, special education.									
Class 8:									
Group B, master's degree	10,555	10,820	11,085	11,350	11,615	11,880	12,145	12,410	12,675
Group C, master's degree plus 30 credit hours	10,755	11,020	11,285	11,550	11,815	12,080	12,345	12,610	12,875
Dean of students, teachers college.									
Director, school attendance.									
Professor, teachers college.									
Registrar, teachers college.									
Supervising director, adult education and summer school.									
Supervising director, athletics.									
Supervising director, curriculum.									
Assistant principal, elementary school.									
Assistant principal, junior high school.									
Assistant principal, senior high school.									
Assistant principal, vocational high school.									
Assistant principal, Americanization school.									
Assistant principal, health school.									
Supervising director, elementary education (supervision and instruction).									
Supervising director, reading clinic.									
Supervising director, subject field.									
Class 9:									
Group A, bachelor's degree	9,615	9,880	10,145	10,410	10,675	10,940	11,205	11,470	11,735
Group B, master's degree	10,115	10,380	10,645	10,910	11,175	11,440	11,705	11,970	12,235
Group C, master's degree plus 30 credit hours	10,315	10,580	10,845	11,110	11,375	11,640	11,905	12,170	12,435
Assistant director, food services.									
Supervising director, audiovisual instruction.									
Class 10:									
Group B, master's degree	9,680	9,945	10,210	10,475	10,740	11,005	11,270	11,535	11,800
Group C, master's degree plus 30 credit hours	9,880	10,145	10,410	10,675	10,940	11,205	11,470	11,735	12,000
Assistant director, adult education and summer schools.									
Statistician.									
Class 11:									
Group B, master's degree	9,240	9,505	9,770	10,035	10,300	10,565	10,830	11,095	11,360
Group C, master's degree plus 30 credit hours	9,440	9,705	9,970	10,235	10,500	10,765	11,030	11,295	11,560
Assistant director, audiovisual.									
Assistant director, practical nursing.									
Assistant director, subject field.									
Associate professor, teachers college.									
Chief librarian, teachers college.									
Supervisor, elementary education.									
Class 12:									
Group B, master's degree	8,805	9,070	9,335	9,600	9,865	10,130	10,395	10,660	10,925
Group C, master's degree plus 30 credit hours	9,005	9,270	9,535	9,800	10,065	10,330	10,595	10,860	11,125
Chief attendance officer.									
Clinical psychologist.									
Class 13:									
Group B, master's degree	7,900	8,225	8,550	8,875	9,200	9,525	9,850	10,175	10,500
Group C, master's degree, plus 30 credit hours	8,100	8,425	8,750	9,075	9,400	9,725	10,050	10,375	10,700
Assistant professor, teachers college.									
Assistant professor, laboratory school.									
Psychiatric social worker.									

Salary class and position	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8
Class 14:								
Group A, bachelor's degree	$6,440	$6,710	$6,980	$7,250	$7,520	$7,790	$8,060	$8,330
Group B, master's degree	6,940	7,210	7,480	7,750	8,020	8,290	8,560	8,830
Group C, master's degree plus 30 credit hours	7,140	7,410	7,680	7,950	8,220	8,490	8,760	9,030
Class 15:								
Group A, bachelor's degree	5,350	5,620	5,890	6,125	6,360	6,595	6,830	7,065
Group B, master's degree	5,850	6,120	6,390	6,625	6,860	7,095	7,330	7,565
Group C, master's degree plus 30 credit hours	6,050	6,320	6,590	6,825	7,060	7,295	7,530	7,765
Attendance officer.								
Child labor inspector.								
Counselor, placement.								
Librarian, elementary and secondary schools.								
Librarian, teachers college.								
Research assistant.								
School social worker.								
Speech correctionist.								
Coordinator of practical nursing.								
Teacher, elementary and secondary schools.								
Census supervisor.								
Counselor, elementary and secondary schools.								
Instructor, teachers college.								
Instructor, laboratory school.								
School psychologist.								

Salary class and position	Service step 9	Service step 10	Service step 11	Service step 12	Service step 13	Longevity step X	Longevity step Y
Class 14:							
Group A, bachelor's degree	$8,600	$8,870	$9,140	$9,410	$9,680	----------	----------
Group B, master's degree	9,100	9,370	9,640	9,910	10,180	----------	----------
Group C, master's degree plus 30 credit hours	9,300	9,570	9,840	10,110	10,380	----------	----------
Class 15:							
Group A, bachelor's degree	7,300	7,535	7,770	8,005	8,240	$8,795	$9,350
Group B, master's degree	7,800	8,035	8,270	8,505	8,740	9,295	9,850
Group C, master's degree plus 30 credit hours	8,000	8,235	8.470	8,705	8,940	9,495	10,050
Attendance officer.							
Child labor inspector.							
Counselor, placement.							
Librarian, elementary and secondary schools.							
Librarian, teachers college.							
Research assistant.							
School social worker.							
Speech correctionist.							
Coordinator of practical nursing.							
Teacher, elementary and secondary schools.							
Census supervisor.							
Counselor, elementary and secondary schools.							
Instructor, teachers college.							
Instructor, laboratory school.							
School psychologist.							

(Aug. 5, 1955, 69 Stat. 521, ch. 569, title I, § 1; July 25, 1958, 72 Stat. 414, Pub. L. 85–552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85–838, § 1; Sept. 13, 1960, 74 Stat. 913, Pub. L. 87–773, § 1; Oct. 24, 1962, 76 Stat. 1229, Pub. L. 87–881, title I, § 101(1); Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(5); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88–575, title II, § 201(1).)

AMENDMENTS

1964—Section 201(1) of act, Sept. 2, 1964, amended section by inserting new schedules as above set out.

1964—Section 306(i)(5) of act, Aug. 14, 1964, amended the Salary Schedule relating to the Superintendent and Deputy Superintendent of Schools to read as above set out.

1962—Section 101(1) of act, Oct. 24, 1962, amended the section by substituting new schedules as above set out.

EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

Section 205 of act, Sept. 2, 1964, provided: "The provisions of this title [amending sections 31–1501, 31–729, 31–1531, and 31–1542] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF ACT, AUG. 14, 1964

See note to section 1–204a.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act, Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–15Q1, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

GROUP INSURANCE PROVISIONS OF ACT, SEPT. 2, 1964

Section 204 of act, Sept. 2, 1964, provided: "For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954 as amended, all changes in rates of compensation or salary which result from the enactment of this title shall be held and considered to be effective as of the date of enactment of this Act."

GROUP INSURANCE PROVISIONS OF ACT, AUG. 14, 1964

See note to section 1–204.

RETROACTIVE COMPENSATION UNDER ACT, SEPT. 2, 1964, TITLE I

Section 203 (a) and (b) of act, Sept. 2, 1964, provided: (a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this Act who retired during the period beginning on the day following the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act for services rendered during such period, and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), [5 U.S.C. 61f–61k], as amended, for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of tihs Act by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

RETROACTIVE SALARY PROVISIONS OF ACT, AUG. 14, 1964

See note to section 1–204a.

CROSS REFERENCES

Teachers employed on a temporary basis, qualification for group and health insurance, see, 5 U.S.C. 2091(a) and 5 U.S.C. 3002(a).

Federal Employees' Group Life Insurance Act, participation in by teachers serving under temporary appointments, see 5 U.S.C. 2091(a).

Salary increase for employees whose compensation is fixed by administrative action, see 5 U.S.C. 113 note.

NOTES TO DECISIONS

1. Promotion of teachers without master's degrees

Teachers' Salary Act amendment, which in effect provided that incumbent teachers in senior high schools, who did not possess master's degrees, should be placed in same salary classification as those who had such degrees, included incumbent teachers of academic subjects in vocational high schools having only bachelor's degrees. *R. B. Thompson, Jr.* v. *Board of Education etc.* (1962, 299 F. 2d 920, 112 U.S. App. D.C. 89).

Teacher, who filed complaint seeking to be placed in higher salary bracket, slightly more than 60 days after being informed that his application to Board of Education for such relief had been denied, and that he had no further administrative relief, was not guilty of laches. *Id.*

Teachers' Salary Act provision that no senior high school teacher and no non-shop teacher in vocational high school should be appointed or promoted to any position specified unless he possessed master's degree, was applicable to new appointees only, and did not disturb status of teachers without master's degrees who had been placed on same salary basis as those with master's degrees by prior amendment. *Id.*

§ 31–1502. Repealed. Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87–881, Title I, § 102.

Section of act Sept. 13, 1960, 74 Stat. 913, Pub. L. 86–773, § 2 granted a salary increase of 7.5 per centum.

Effective date of repeal is January 1, 1963.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§ 31–1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31–1501. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1962, or to which they may be transferred and assigned under the provisions of section 31–1521 and section 31–1522. No teacher, school officer, or other employee shall be appointed or promoted to any position in section 31–1501 on probationary or permanent status unless he possesses a master's degree, except that a person possessing a bachelor's degree may be appointed on probationary or permanent status as Director of Food Services, Assistant Director of Food Services, Supervising Director of Military Science and Tactics, teacher of military science and tactics, teacher of driver training, shop teacher in the vocational education program, teacher in the junior high school, teacher in the elementary schools, research assistant, attendance officer, child labor inspector, or census supervisor, and a person not possessing a bachelor's degree may be appointed on probationary or permanent status as shop teacher in the vocational education program if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board. No teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of December 31, 1962, and except that a person not possessing a master's degree who was appointed on probationary or permanent status before January 1, 1963, to a position as a nonshop teacher in a vocational education program, or counselor in the vocational high schools, or counselor in the junior high schools may continue to be employed in such a position, and except that a person not possessing a master's degree who was on the list of eligible candidates for any such position before January 1, 1963, may continue to be eligible for such position until the expiration of such eligible list. No teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of December 31, 1962. (Aug. 5, 1955, 69 Stat. 523, ch. 569, title II, § 2; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1231, Pub. L. 87–881, title I, § 101(2).)

Amendments

1962—Section 101(2) of act Oct. 24, 1962, made the following amendments to the section: In subsection (a) third sentence, struck out "December 31, 1957" and inserted "December 31, 1962". In the fourth sentence struck out the words "counselor in the vocational high schools, counselor in the junior high schools" and the words, "school social worker," and at the end of the sentence by inserting before the period, and following the word "Board" the matter beginning with "and except" and continuing to end of that sentence. In the fifth sentence it struck out "December 31, 1957" and inserted "December 31, 1962".

Section 101(3) of the same act amended subsection (b) by striking the figure "18" wherever same appeared in subsection (b) and changed to "15".

Effective Date of 1962 Amendment

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending section 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

NOTES TO DECISIONS

1. Promotion of teachers without master's degrees

Teachers' Salary Act amendment, which in effect provided that incumbent teachers in senior high schools, who did not possess master's degrees, should be placed in same salary classification as those who had such degrees, included incumbent teachers of academic subjects in vocational high schools having only bachelor's degrees. *R. B. Thompson, Jr.* v. *Board of Education etc.* (1962, 299 F. 2d 920, 112 U.S. App. D.C. 89).

Teacher, who filed complaint seeking to be placed in higher salary bracket, slightly more than 60 days after being informed that his application to Board of Education for such relief had been denied, and that he had no further administrative relief, was not guilty of laches. *Id.*

Teachers' Salary Act provision that no senior high school teacher and no non-shop teacher in vocational high school should be appointed or promoted to any position specified unless he possessed master's degree, was applicable to new appointees only, and did not disturb status of teachers without master's degrees who had been placed on same salary basis as those with master's degrees by prior amendment. *Id.*

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31–1521. Rules for assignment to salary classes—Comparative tables.

Each teacher, school officer, or other employee in the service of the Board on January 1, 1963, who occupies a position held by him on December 31, 1962, under the provisions of this chapter, shall be placed in a salary class covered by section 35–1501 as indicated at the end of this section. Any employee in group A, B, or C of his salary class on December 31, 1962, shall be assigned to the same letter group of the salary class to which he is transferred on January 1, 1963.

Title and Class of Position on December 31, 1962

Title	*Class*
Superintendent	1
Deputy superintendent	2
Assistant superintendent	3
Assistant superintendent in charge of business affairs	3
President, District of Columbia Teachers College	3
Dean, District of Columbia Teachers College	4
Chief examiner	5
Dean of students, teachers college	5
Executive assistant to the superintendent	5
Psychiatrist	5
Director, food services	5
Executive assistant to the deputy superintendent	6

Title and Class of Position on January 1, 1963

Title	*Class*
Superintendent	1
Deputy superintendent	2
Assistant superintendent	3
Assistant superintendent in charge of business affiairs	3
President, District of Columbia Teachers College	3
Dean, District of Columbia Teachers College	4
Chief examiner	5
Dean of students, District of Columbia Teachers College	8
Executive assistant to the superintendent	5
Psychiatrist	5
Director, food services	5
Executive assistant to the deputy superintendent	6

Title and Class of Position on December 31, 1962	
Title	*Class*
Assistant to the assistant superintendent (elementary schools)	6
Director, curriculum	4
Director, elementary education (administration)	7
Director, elementary edtion (supervision and instruction)	6
Director in elementary education	7
Director, health, physical education, athletics and safety	6
Director, industrial and adult education	5
Director, special education	7
Principal, senior high school	6
Principal, vocational high school	6
Principal, junior high school	7
Registrar, teachers college	7
Principal, Americanization School	7
Principal, junior high school	7
Professor, District of Columbia Teachers College	8
Supervising director, adult education and summer schools	8
Supervising director, athletics	8
Supervising director, curriculum	8
Supervising director, elementary education (supervision and instruction)	8
Assistant to the assistant superintendent (general research, budget and legislation)	8
Assistant to the assistant superintendent (junior and senior high schools)	7
Assistant to the assistant superintendent (pupil appraisal, study and attendance)	8
Supervising director, reading clinic	8
Supervising director, subject field	8
Director, school attendance	8
Supervising director, audio-visual instruction	9
Principal, elementary school	8
Principal, Capitol Page School	8
Principal, health school	7
Principal, laboratory school	7
Assistant principal, senior high school	8
Assistant principal, vocational high school	8
Assistant director, food services	9
Assistant principal, junior high school	9
Assistant principal, Americanization School	9
Associate professor, District of Columbia Teachers College	13
Assistant principal, elementary school	11
Assistant principal, health school	14
Assistant director, audio-visual instruction	13
Assistant director, evening and summer schools	11
Principal, veterans high school	8
Assistant director, practical nursing	13
Assistant director, subject field	13

Title and Class of Position on January 1, 1963	
Title	*Class*
Assistant to the assistant superintendent (elementary schools)	6
Director, curriculum	4
Director, elementary education (administration)	7
Director, elementary education (supervision and instruction)	6
Director in elementary education	7
Director, health, physical education, athletics and safety	6
Director, industrial and adult education	5
Director, special education	7
Principal, senior high school	6
Principal, vocational high school	6
Principal, boys' junior-senior high school	6
Registrar, District of Columbia Teachers College	8
Principal, Americanization School	6
Principal, junior high school	6
Professor, District of Columbia Teachers College	8
Supervising director, adult education and summer schools	8
Supervising director, athletics	8
Supervising director, curriculum	8
Supervising director, elementary education (supervision and instruction)	8
Assistant to the assistant superintendent (general research, budget, and legislation	6
Assistant to the assistant superintendent (junior and senior high schools)	6
Assistant to the assistant superintendent, (pupil appraisal, study and attendance)	6
Supervising director, reading clinic	8
Supervising director, subject field	8
Director, school attendance	8
Supervising director, audio-visual instruction	9
Principal, elementary school	6
Principal, Capitol Page School	8
Principal, health school	6
Principal, laboratory school	6
Assistant principal, senior high school	8
Assistant principal, vocational high school	8
Assistant director, food services	9
Assistant principal, junior high school	8
Assistant principal, Americanization School	8
Associate professor, District of Columbia Teachers College	11
Assistant principal, elementary school	8
Assistant principal, health school	8
Assistant director, audio-visual instruction	11
Assistant director, evening and summer schools	10
Principal, veterans high school	6
Assistant director, practical nursing	11
Assistant director, subject field	11

Title and Class of Position on December 31, 1962	
Title	*Class*
Statistician	11
Assistant professor, District of Columbia Teachers College	16
Assistant professor, laboratory school	16
Chief attendance officer	15
Chief librarian, District of Columbia Teachers College	13
Clinical psychologist	15
Supervisor, elementary education	13
Psychiatric social worker	16
Attendance officer	18
Census supervisor	18
Child labor inspector	18
Coordinator, practical nursing	18
Counselor, elementary and secondary schools	18
Counselor, placement	18
Instructor, District of Columbia Teachers College	18
Instructor, laboratory schools	18
Librarian, elementary and secondary schools	18
Librarian	18
Research assistant	18
School psychologist	18
School social worker	18
Speech correctionist, District of Columbia Teachers College	18
Teacher, elementary and secondary schools	18

Title and Class of Position on January 1, 1963	
Title	*Class*
Statistician	10
Assistant professor, District of Columbia Teachers College	13
Assistant professor, laboratory school	16
Chief attendance officer	12
Chief librarian, District of Columbia Teachers College	11
Clinical psychologist	12
Supervisor, elementary education	11
Psychiatric social worker	13
Attendance officer	15
Census supervisor	15
Child labor inspector	15
Coordinator, practical nursing	15
Counselor, elementary and secondary schools	15
Counselor, placement	15
Instructor, District of Columbia Teachers College	15
Instructor, laboratory schools	15
Librarian, elementary and secondary schools	15
Librarian	15
Research assistant	15
School psychologist	15
School social worker	15
Speech correctionist, District of Columbia Teachers College	15
Teacher, elementary and secondary schools	15

(Aug. 5, 1955, 69 Stat. 524, ch. 569, title III, § 1; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1232, Pub. L. 87–881, title I, § 101(4).)

AMENDMENTS

1962—Section 101 (4) of act Oct. 24, 1962, amended the section by changing "1958" to "1963", "1957" to "1962" in the first sentence; by changing "1957" to "1962," "1958" to "1963" in the second sentence and by eliminating the balance of the sentence beginning with the word "except"; and by eliminating the last sentence in the section. It also amended the section by substituting new comparative tables as above set out.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

§ 31–1531. Method of assignment to service steps—Promotion of employees.

(a)(1) On January 1, 1963, each permanent employee assigned to salary classes 2 through 15 in accordance with section 31–1501 and section 31–1521 shall be assigned to the same numerical service step on the schedule for his salary class, or salary class and group, under this chapter as he occupied on December 31, 1962, except that employees assigned to salary class 15 on January 1, 1963, who on December 31, 1962, were on service step 13 shall be assigned to service steps for their respective groups as follows: An employee who on January 1, 1963, has completed fifteen years of creditable service but less than eighteen years shall be assigned to longevity step X, and an employee who on January 1, 1963, has completed eighteen years of creditable service shall be assigned to longevity step Y. In determining years of creditable service for placement on service steps, credit shall be given for previous serv-

ice in accordance with the provisions of this chapter governing the placement of employees who are newly appointed, reappointed, or reassigned or who are brought under this chapter in accordance with the provisions of section 31–1522.

(2) Any teacher who was promoted from the salary class originally designated Salary Class 18 under this chapter (redesignated as Salary Class 15 by amendments effective on January 1, 1963 [act Oct. 24, 1962, Pub. L. 87–881]), if such promotion occurred after June 30, 1958, and prior to January 1, 1963, and who on the effective date of this paragraph occupies the same position to which he was promoted during such period shall be assigned to the numerical service step in his class, or class and group to which he would have been assigned had be been promoted on or after January 1, 1963.

(b) As soon as such reevaluation is completed for all employees involved, each such employee shall be assigned to the numerical service step for his salary class, or class and group, under this chapter next above the step corresponding to the number of his years of creditable service rendered prior to July 1, 1958, as determined by such re-evaluation, but no employee shall receive a salary above the top step for his class, or class and group, or below the step already occupied by him. If such re-evaluation places the employee on a higher numerical service step than the one already occupied by him, he shall receive the full annual salary at the higher step for the year beginning July 1, 1958. Beginning on July 1, 1959, each permanent employee who has not yet reached the highest service step for his salary class, or class and group, under this chapter shall advance one such step each year until he reaches the highest step for his class, or class and group, except that each employee in salary class 15 shall advance from service step 13 to longevity step X on July 1 following the completion of fifteen years of creditable service; from longevity step X to longevity step Y on July 1 following the completion of eighteen years of creditable service: *Provided,* That beginning with the step increase normally due July 1, 1963, the Board of Education, on the written recommendation of the Superintendent of Schools, is authorized to deny any such salary advancement for the year immediately following any year in which the employee fails to receive a performance rating of 'satisfactory' from his superior officer. (Aug. 5, 1955, 69 Stat. 526, ch. 569, title IV, § 6; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1233, Pub. L. 87–881, title I, § 101 (5) (6); Sept. 2, 1964, 78 Stat. 885, Pub. L. 78–885, Title II, § 201(2).)

AMENDMENTS

1964—Section 201(2) of act Sept. 2, 1964, amended section by designating subparagraph (a) as (a)(1), and by adding (a)(2) thereto.

1962—Section 101(5) of act Oct. 29, 1962, amended subsection (a) to read as above set out. For comparison see subsection (a) in main volume of the Code. Subsection (b) was amended, by section 101(6) of the same act, by striking the period at the end thereof and inserting the matter following the word "group" beginning with word "except" to the end of the paragraph.

EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

Section 205 of act, Sept. 2, 1964, provided: "The provisions of this title [amending sections 31–1501, 31–729, 31–1531, and 31–1542] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

§ 31–1532. Assignment of new employees to service steps—Evaluation of past experience—Absence because of military or naval service.

(a) Each employee who is newly appointed or reappointed to a position under section 31–1501, except the Superintendent of Schools, shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each such employee to determine the number of years with which he may be so credited. Employees newly appointed, reappointed, or reassigned to any position in salary class 15 shall receive one year of such placement credit for each year of satisfactory service, not in excess of five years, in the same type of position regardless of school level, in an educational system or institution of recognized standing outside the District of Columbia public schools, as determined by the Board: *Provided,* That employees appointed to the positions of attendance officer, census supervisor, child labor inspector, counselor, librarian, research assistant, school psychologist, and school social worker shall also receive one year of placement credit for each year of satisfactory service in a teaching position, but not in excess of five years for all types of service rendered outside the school system, and persons appointed to the position of shop teacher in the vocational education program shall receive one year of placement credit for each year of approved experience in the trades, as determined by the Board, but not in excess of five years for any combination of trade experience and educational service outside the school system. Employees newly appointed or reappointed to positions of assistant professor (salary class 13), chief librarian and associate professor (salary class 11), and professor (salary class 8) shall receive one year of placement credit for each year of satisfactory service, not in excess of five years, in a position of the same or higher rank in a college or university of recognized standing outside the District of Columbia public schools, as determined by the Board. Employees newly appointed, reappointed, or reassigned to any position in salary classes 1 to 14 inclusive, except the positions of chief librarian and assistant professor, associate professor and professor, shall receive no placement credit for educational service or trade experience outside the District of Columbia public schools. Employees reappointed or reassigned to positions in classes 2 to 15 inclusive shall receive one year of placement credit for each year of satisfactory serv-

ice in the same salary class or in a position of equivalent or higher rank within the District of Columbia public schools, except that no employee shall receive more than five years of placement credit for previous service in any combination of the following: (1) service rendered outside the public school system, (2) service rendered as a temporary employee within such system, and (3) service rendered prior to reappointment after resignation from such system. Credit for service rendered either inside or outside the District of Columbia public schools shall be effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the date of appointment, whichever is later.

* * * * *

(Aug. 5, 1955, 69 Stat. 527, ch. 569, title IV, § 7; Aug. 28, 1958, 72 Stat. 1010, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87–881, title I, § 101 (7).)

AMENDMENTS

1962—Section 101 (7) of act Oct. 24, 1962, amended subsection (a) by striking the figure "18" in two places and changing it to "15"; by striking the figure "17" and changing it to "14", and by striking out the fourth sentence and substituting a new fourth sentence as above set out for comparison of same sentence see main volume of the Code.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1052] of this title shall take effect as of January 1, 1963."

§ 31–1533. Salary increases of probationary employees—Termination of employment.

(a) Each teacher, school officer, and other employee appointed or promoted on probationary tenure to a position covered by section 31–1501 shall receive his first increase in salary in that position on the beginning day of his second year of probationary service in the position; he shall receive his second increase in salary in that position on the date when his appointment or promotion to the position is made permanent; and he shall receive all subsequent increases in salary to which he is entitled in that position on July 1 of each year, beginning with the July 1 next after the date of his permanent appointment or promotion to the position in accordance with section 31–1531 and section 31–1532, except that beginning with any such step increase normally due subsequent to June 30, 1963, the Board of Education, on written recommendation of the Superintendent of Schools, is authorized to deny any such increase in salary for the year immediately following any year in which the employee fails to receive a performance rating of "satisfactory" from his superior officer.

* * * * *

(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 8; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87–881, title I, § 101(8).)

AMENDMENTS

1962—Section 101(8) of act Oct. 24, 1962, amended subsection (a) by striking the period at the end of the section and adding thereto the matter beginning with the word "except" and ending with the word "Board".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

§ 31–1536. Promotions—Assignment to numerical service step.

Any employee in a salary class covered by section 31–1501, when promoted to a higher-paid salary class, shall be assigned to the lowest numerical service step on the schedule for his new class, or class and group, which will give him an immediate increase in annual salary rate at least equal to the sum of the following:

(1) Any annual service increment or longevity increment to which the employee would have been entitled in his former salary class at the time of his promotion; and

(2) The annual service increment scheduled for his new class and group: *Provided,* That no such employee shall be assigned to a higher numerical service step on the schedule for his new class, or class group, than he would have occupied on the schedule from which promoted. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 11, eff. July 1, 1955; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87–881, title I, § 101(11).)

AMENDMENTS

1962—Section 101(9) of act Oct. 24, 1962, amended clause (1) by inserting after the word "increment" the words "or longevity increment."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

§ 31–1541. Repealed. Aug. 19, 1964, 78 Stat. 495, Pub. L. 88–448, title IV, § 402(a)(32).

Section of act Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 12, related to the employment of retired members of the armed services as teachers of military science and tactics in public high schools of the District. See section 31–631b.

EFFECTIVE DATE OF REPEAL

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

§ 31–1542. Evening, summer, and Americanization schools—Salaries.

(a) The Board is hereby authorized to conduct as parts of the public school system, summer schools, adult education schools, and an Americanization School, under and within appropriations made by Congress. The pay rates for teachers, officers, and other educational employees in the summer and adult education schools shall be as follows:

Classification	Step 1	Step 2	Step 3
	Per diem		
SUMMER SCHOOL (REGULAR)			
Teacher, elementary and secondary schools, and instructor, District of Columbia Teachers College	$20.97	$23.18	$25.29
Assistant professor, District of Columbia Teachers College	25.16	28.82	30.35
Associate professor, District of Columbia Teachers College	27.26	30.13	32.88
Assistant principal, elementary and secondary schools	30.41	33.61	36.67
Supervising director, and professor, District of Columbia Teachers College	30.41	33.61	36.67
Principal, elementary and secondary schools	33.55	37.09	40.46
	Per period		
VETERANS SUMMER HIGH SCHOOL CENTERS			
Teacher	$31.46	$34.77	$37.94
ADULT EDUCATION SCHOOLS			
Teacher	5.13	5.67	6.18
Assistant principal	7.44	8.22	8.96
Principal	8.21	9.07	9.89

(b) Beginning on January 1, 1963, each teacher, officer, and other educational employee serving in the summer or adult education schools shall be paid at the rate specified for his position under step 1 of the schedule in subsection (a) of this section while serving his first, second, and third years in such position; he shall be paid at the rate specified under step 2 while serving his fourth, fifth, and sixth years in such position; and he shall be paid at the rate specified in step 3 while serving his seventh and any subsequent years in such position.

(c) When an employee covered by the pay schedule in subsection (a) of this section is promoted to a higher paid position in this same schedule, he shall be paid at the next higher scheduled rate for in such position at the scheduled rate for such position which is next above the rate he would have received if continued in his previous position; he shall be paid at the next higher scheduled rate for his position during his second three years of service in such position; and he shall be paid at the scheduled rate above that (if any) during his subsequent years in such position. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 13; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87–881, title I, § 101(10)(11); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88–575, title II, § 201(3).)

AMENDMENTS

1964—Section 201(3) amended section by striking out "evening schools" wherever same appeared in section and inserted in lieu, "adult education schools," and by amending the schedule of pay rates in subsection (a) as above set out.

1962—Section 101(10) of act Oct. 24, 1962, amended subsection (a) by striking the classification and pay rates tables and inserting new tables as above set out.

Section 101(11) amended subsection (b) by striking "January 1, 1958" and inserting "January 1, 1963".

EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

Section 205 of act, Sept. 2, 1964, provided: "The provisions of this title [Amending sections 31–1501, 31–729, 31–1531, and 31–1542] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

§ 31–1543. Classification of certain employees as teachers.

Each employee assigned to salary class 15 in the schedule provided in section 31–1501, each assistant professor in salary class 13, each associate professor and chief librarian in salary class 11 and each professor in salary class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 14; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87–881, title I, § 101(12).)

AMENDMENTS

1962—Section 101(12) of act Oct. 24, 1962, amended section to read as above set out. For comparison of section before this amendment see main volume of Code.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

§ 31–1544. Authority of Board to regulate vacation period and annual leave applicable to certain employees.

On and after January 1, 1963, sections 31–698 and 31–698a shall apply to employees of the Board of Education whose salaries are fixed in salary classes 6 through 14, inclusive, under this chapter, except the following: Executive assistant to deputy superintendent and assistants to assistant superintendents in salary class 6; dean of students, District of Columbia Teachers College, professor, District of Columbia Teachers College, director, school attendance, and registrar, District of Columbia Teachers College, in salary class 8; assistant director, department of food services, in salary class 9; statistician, in salary class 10; associate professor, District of Columbia Teachers College, and chief librarian, District of Columbia Teachers College, in salary class 11; and assistant professor, District of Columbia Teachers College, in salary class 13. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 15, Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87–881, title I; § 101(13).)

AMENDMENTS

1962—Section 101(13) of act Oct. 24, 1962, amended section to read as above set out. For comparison of section before this amendment see main volume of Code.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

§ 31–1545. Sick and emergency leave provisions applicable to certain employees.

On and after January 1, 1963, sections 31–691, 31–692 to 31–694, 31–695, 31–696, 31–697 shall apply to employees of the Board whose salaries are fixed in salary class 15, and to the following employees in the salary classes indicated: Professor, class 8; associate professor, class 11; assistant professor,

salary class 13; and chief librarian, salary class 11, under this chapter. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 16; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87–881, title I, § 101(14).)

AMENDMENTS

1962—Section 101(14) amended section by striking "1958" and inserting "1963"; by striking "18" and changing to "15"; by striking "chief librarian and assistant professor, salary class 14" and inserting in lieu thereof "assistant professor, salary class 13; and chief librarian salary class 11."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS

Chapter 2.—WASHINGTON HUMANE SOCIETY

§ 32–205. Police to arrest law violators at request of member of society—Evidence of membership.

Members of the Metropolitan Police force of the District of Columbia, upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant, and take him before the District of Columbia Court of General Sessions for trial. Proper evidence of membership to a police officer shall be the exhibition of a badge or certificate of membership in the Society. (As amended Dec. 23, 1963, 77 Stat. 618, Pub. L. 88–241, § 12.)

AMENDMENT

1963—Section 12 of act Dec. 23, 1963, amended the section to read as above set out.

Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

§§ 32–317, 32–318, 32–319, 32–320. Omitted.

CODIFICATION

These sections dealing with Freedmen's Hospital, are omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87–267 (hereinafter set out in full) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

ACT SEPT. 21, 1961, TRANSFERRING FREEDMEN'S HOSPITAL TO HOWARD UNIVERSITY

TRANSFER OF FREEDMEN'S HOSPITAL

SECTION 1. (a) For the purpose of assisting in the provision of teaching hospital resources for Howard University, thereby assisting the university in the training of medical and allied personnel and in providing hospital services for the community, the Secretary of Health, Education, and Welfare shall, pursuant to agreement with the board of trustees of Howard University, transfer to Howard University, without reimbursement, all right, title, and interest of the United States in certain lands in the District of Columbia, together with the buildings and improvements thereon, and the personal property used in connection therewith (as determined by the Secretary), commonly known as Freedmen's Hospital.

(b) It is the intent of Congress (1) that the transfer of Freedmen's Hospital to Howard University be effected as soon as practicable, (2) to assure the well-being of patients at Freedmen's Hospital during the period of transition, and (3) that the transfer be effected with minimum dislocation of the present hospital staff and maximum consideration of their interests as employees.

(c) The Secretary of Health, Education, and Welfare shall report to the Congress the terms of the agreement for such transfer.

PROVISION FOR EMPLOYEES OF HOSPITAL

SEC. 2. (a) The agreement for transfer of Freedmen's Hospital referred to in section 1 shall include provisions to assure that—

(1) all individuals who are career or career-conditional employees of the hospital on the day preceding the effective date of the transfer of the hospital, except those in positions with respect to which they have been notified not less than six months prior to the effective date of such transfer that their positions are to be abolished, will be offered an opportunity to transfer to Howard University;

(2) Howard University—

(A) will not reduce the salary levels for such employees who transfer,

(B) will deposit currently (i) in the civil service retirement and disability fund created by the Act of May 22, 1920, the employee deductions and agency contributions required by the Civil Service Retirement Act, and (ii), in the fund created by section 5(c) of the Federal Employees' Group Life Insurance Act of 1954 the employee deductions and agency contributions required by the Federal Employees' Group Life Insurance Act of 1954,

(C) will provide other benefits for such employees as nearly equivalent as may be practicable to those generally applicable, on the effective date of the transfer of the hospital, to civilian employees of the United States, and

(D) in determining the seniority rights of its employees, Howard University will credit service with Freedmen's Hospital performed by such employees who transfer, on the same basis as it would credit such service had it been performed for such University;

(3) the transfer will become effective not later than the beginning of the second month which begins after construction of the new hospital facilities authorized by section 3 is commenced.

(b) The Department of Health, Education, and Welfare shall make every reasonable effort to place in other comparable Federal positions all individuals who are career or career-conditional employees of Freedmen's Hospital on the date of enactment of this Act and who do not transfer to Howard University.

(c) Each individual who is an employee of Freedmen's Hospital on the date of enactment of this Act and who transfers to Howard University shall, so long as he is continuously in the employ of Howard University, be regarded as continuing in the employ of the United States for the purposes of the Civil Service Retirement Act, the Federal Employees' Group Life Insurance Act of 1954. For purposes of section 3121(b) of the Internal Revenue Code of 1954 and section 210 of the Social Security Act, service performed by such individual during the period of his employment at Howard University shall be regarded as though performed in the employ of the United States.

AUTHORIZATION OF CONSTRUCTION OF HOSPITAL FACILITIES

SEC. 3. For the purpose specified in section 1, there are hereby authorized to be appropriated such sums as may be necessary for the construction of a building or buildings and facilities, including equipment, and for remodeling of existing buildings (including repair and replacement of equipment) which are to be combined with the building or buildings and facilities so constructed, to provide a hospital with a capacity of not to exceed five hundred beds.

CONTINUED OPERATION OF FACILITIES

SEC. 4. If, within twenty years after the completion of construction (as determined by the Secretary of Health, Education, and Welfare) of the new hospital facilities authorized by section 3, any of such facilities, or of the facilities transferred pursuant to section 1 and combined with such new facilities, are transferred by Howard University to any other person or entity (except a transfer to the United States) or cease to be operated by the university as teaching hospital facilities, the United States

shall be entitled to recover from the transferee or the university, in the case of a transfer, or from the university, if there is no transfer, an amount equal to the then value of such facilities (or so much thereof as is involved in the transfer, as the case may be), such value to be determined by agreement of the parties or by action brought in the United States District Court for the District of Columbia.

AUTHORIZATION OF APPROPRIATIONS FOR OPERATION

SEC. 5. In order to facilitate operation of teaching hospital facilities at Howard University, there are authorized to be appropriated annually to the university such sums as the Congress may determine, for the partial support of the operation of such facilities giving consideration to the cost imposed by the provisions of section 2 and the portion of the agreement under this Act relating to such provisions. The cost of operating such facilities, the appropriations pursuant to this section, and any other income derived from such operation or available for such purpose shall be identified and accounted for separately in the accounts of the university.

FINANCIAL POLICY

SEC. 6. It is hereby declared to be the policy of the Congress that, to the extent consistent with good medical teaching practice, the Howard University Hospital facilities shall become progressively more self-supporting. In order to further this policy, the President shall submit to the Congress a report, based on a study of the financing of the operation of the hospital, containing his recommendations on the rate at which, consistent with the above policy, Federal financial participation in such cost of operation shall be reduced. Such report shall be submitted not later than the end of the second calendar year following the year in which the construction of the new hospital facilities, authorized by section 3, is completed.

REPEAL OF LAWS

SEC. 7. All laws heretofore applicable specifically to Freedmen's Hospital are, to the extent of such applicability, repealed, effective with the transfer of Freedmen's Hospital pursuant to section 1.

TRANSFER OF FUNDS

SEC. 8. All unexpended balances of appropriations, allocations, and other funds, available or to be made available, of Freedmen's Hospital are, effective with the transfer of Freedmen's Hospital pursuant to section 1, transferred to Howard University for use in the operation of the Howard University Hospital facilities, except to the extent (determined by the Director of the Bureau of the Budget) required to meet obligations already incurred and not assumed by the university.

(Sept. 21, 1961, 75 Stat. 542, Pub. L. 87–267, §§ 1—8.)

§ 32–330. Discharge as cured.

In case any person adjudged to be of unsound mind in the District of Columbia who is committed to Saint Elizabeths Hospital, or any other institution, recovers his or her reason, and who is discharged from such institutions as cured, the superintendent of said Saint Elizabeths Hospital, or the official in charge of any such other institution where such person has been under treatment and has been so discharged, shall immediately thereafter file with the clerk of the United States District Court for the District of Columbia his sworn statement that such person, in his opinion, was at the time of his discharge of sound mind, and such statement shall be sufficient to authorize the court to pass an order declaring such person to be restored to his or her former legal status as a person of sound mind. (Feb. 23, 1905, ch. 738, § 2, 33 Stat. 740; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CODIFICATION

"United States District Court for the District of Columbia" was inserted into the section by the codifiers in lieu of "Supreme Court of the District of Columbia" which was the name of the court at the time of enactment of the section.

Chapter 4.—SAINT ELIZABETHS HOSPITAL

§ 32–401a. Repealed, Sept. 15, 1964, 78 Stat. 954, Pub. L. 88–597, § 19(i).

Section 1 of act June 19, 1948, 62 Stat. 549, provided that the funds of the District of Columbia shall not be available for the care of person admitted on and after June 19, 1948, to Saint Elizabeths Hospital who has not lived in the District of Columbia for more than one year, etc. See new sections 21–351 to 21–366.

§ 32–404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

NOTES TO DECISIONS

1. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc.* v. *District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

§§ 32–412 to 32–414. Repealed. Sept. 15, 1964, 78 Stat. 954, Pub. L. 88–597, § 19(h).

Section 1 of act June 22, 1948, 62 Stat. 572, ch. 597, dealt with procedures for admission of applicants to Saint Elizabeths Hospital for mental care, and the payment for his care.

Section 2 of the same act dealt with the applicants' rights of release from the hospital and procedures for his detention.

Section 3 of the same act dealt with the cost of board, medical care and treatment of persons admitted to the hospital. See sections 21–351 to 21–366.

§ 32–417. Commitments by special commissioners of certain United States Courts.

Any United States commissioner specially designated for that purpose by the United States District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland shall have jurisdiction and authority to commit to Saint Elizabeths Hospital in the District of Columbia, for observation and diagnosis, any person found in any place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, Loudoun County, or the city of Alexandria, in the State of Virginia, or in Montgomery County or in Prince Georges County, in the State of Maryland, who is alleged, and is believed by the commissioner, to be of unsound mind. Any United States commissioner specially designated for that purpose by the United States District Court for the District of Columbia shall have like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 32–417a. Any such commitment shall be for

a period not exceeding thirty days and may be made only after a hearing before the commissioner upon the testimony under oath of at least two witnesses who shall testify as to their belief that the said person is of unsound mind and, in addition, upon the testimony under oath or affidavit of two physicians, at least one of whom is skilled in the treatment and diagnosis of nervous and mental disorders, who shall testify or certify in writing that they have examined the said person alleged to be of unsound mind and believe said person to be of unsound mind and not fit to remain at liberty and go unrestrained, and that such person should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order. It shall be the duty of the head of the agency of the United States in control of the place where such person is apprehended to forthwith notify the husband or wife or some near relative or friend of the person so apprehended whose address may be known to said agency head or whose address can by reasonable inquiry be ascertained by him: *Provided further,* That in the case of any person described in section 32–417e, the agency head shall notify the head of the department having jurisdiction over the service to which the individual belongs. The agency of the United States in control of the place where such person is apprehended is authorized to employ physicians for the aforesaid purpose and to pay compensation for their services and to pay expenses of witnesses in such proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the Armed Forces of the United States are hereby authorized to render such services without additional compensation. (Oct. 11, 1949, 63 Stat. 759, ch. 672, § 1; Aug. 30, 1964, 78 Stat. 638, Pub. L. 88–505, § 1.)

AMENDMENT

1964—Section 1 of act Aug. 30, 1964, amends section so as to extend its applicability to Loudoun County, Va., and in addition correct the reference in the proviso clause from 32–417d to 32–417e.

§ 32–417f. Persons entitled to care in a Veterans' Administration facility.

NOTES TO DECISIONS

1. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc.* v. *District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

Chapter 7A.—AID TO DEPENDENT CHILDREN

§§ 32–751 to 32–765. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 24.

Sections of act June 14, 1944, 58 Stat. 277, ch. 257, §§ 1—18, related to aid to dependent children under eighteen years of age. It defined a dependent child as one who has been deprived of parental support by reason of death, continued absence from the home, or physical or mental incapacity of a parent. The sections defined the eligibility of a child for aid, provided for administration of the sections by the Board of Public Welfare, investigation by said Board and determination of amount and starting date of assistance, review of the Board's action, provided for cooperation between the Board and Social Security Board of the United States, and prescribed penalties for procuring assistance by fraud, and contained other implementing provisions. Subject matter is now covered by title 3, chapter 2.

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [32–751 to 32–756] which it now has, or which would have accrued had such Acts not been repealed, shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act" [Title 3, ch. 2].

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

§ 32–781. Purpose of chapter.

NOTES TO DECISIONS

Constitutionality .50
Evidence, sufficiency of .51

.50. Constitutionality

Baby Broker Act is not unconstitutional as vague and indefinite. *A. Dobkin* v. *District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

.51. Evidence, sufficiency of

Evidence sustained conviction for violation of Baby Broker Act. *A. Dobkin* v. *District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

§ 32-788. Penalty for operation as child-placing agency without license—Jurisdiction.

NOTES TO DECISIONS

2. Jury trial

Defendant charged with violating Baby Broker Act for which maximum penalty was fine of up to $300 or imprisonment up to ninety days, or both, was not entitled to jury trial. *A. Dobkin* v. *District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

Chapter 8.—NATIONAL TRAINING SCHOOL FOR BOYS

§ 32–815. Omitted.

This section, act of May 3, 1876, 19 Stat. 50, ch. 90, § 8, as amended, dealing with commitment of boys under the age of seventeen years, is omitted for the reason that it appears to be obsolete in view of the provisions of title 16, chapter 23, particularly section 16–2313.

TITLE 33.—FOOD AND DRUGS

Chapter 1.—ADULTERATION

§ 33-111. Special services for detection of adulteration.

SIMILAR PROVISIONS

1964—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88-479, § 15.
1963—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.
1962—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.

CONTINUATION OF ACT APR. 8, 1960

Section continued by provisions of section 15 of act Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265. See note to section 9-501.

Chapter 4.—NARCOTIC DRUGS

§ 33-414. Search warrants — Requirements — Form — Contents—Return—Penalty for interfering with service.

NOTES TO DECISIONS

Evidence .50
Execution of search warrant .51
Search and seizure 1
Sentences 1.50

.50. Evidence

Evidence supported finding of intent necessary for convictions of petit larceny of meperidine and unlawful possession of meperidine and biphetamine. *D. A. Fisher* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

.51. Execution of search warrant

Search warrant was properly executed, though police allegedly tricked defendant by allowing defendant to think that only janitor was at door of apartment, where door was opened three or four inches by defendant, and one of the officers thrust his badge and search warrant through aperture and stated that he had a search warrant, and when defendant started to run, the officer pulled door open, and night chain slipped off, and that officer then entered and placed defendant under arrest. *C. Jones* v. *United States* (1962, 304 F. 2d 381, 113 U.S. App. D.C. 14).

1. Search and seizure

Defendant's cooperation, before arrest, with police was voluntary where he did not deny involvement of disappearance of meperidine and biphetamine but gave purported explanation thereof, voluntarily told police officer that packages in his automobile trunk were from employer, and repeated such statements to employer in officer's presence. *D. A. Fisher* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

1.50. Sentences

Defendant's assignment of error relating to sentences imposed for conviction of petit larceny and unlawful possession of meperidine would not be considered, where such sentences were each less than sentence imposed for conviction of unlawful possession of biphetamine, and the conviction involving biphetamine was valid. *D. A. Fisher* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

§ 33-416. Common nuisances.

NOTES TO DECISIONS

Probable cause for arrest 3
Warrent of arrest 4

3. Probable cause for arrest

Police, who were cruising area, had probable cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. *A. O. Freeman* v. *United States* (1963, 322 F. 2d 426, 116 U.S. App. D.C. 213).

Admission of testimony, at trial judge's request, that police officer had previously arrested defendant for narcotics violation was error which was prejudicial to defendant who did not take stand during his prosecution for narcotics violation. *Id.*

4. Warrant of arrest

Where police officers received information from reliable informant in afternoon that person for whom arrest warrant was outstanding could be found at defendant's house, but officers made no attempt to serve warrant until 8:30 the next day, delay between time that officers received tip and time they went to defendant's house to make arrest did not negate their bona fide, reasonable belief that accused was still in the house, and narcotic drugs, which were found in a closet by police officers while making a search for persons sought after identifying themselves and forcing entry, were admissible against defendant. *I. M. Palmer* v. *United States* (D.C. App. 1963, 192 A. 2d 801).

§ 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.

NOTES TO DECISIONS

Guilty plea 2.50
Probable cause for arrest 4.50

2.50. Guilty plea

That defendant's family advised him to plead guilty to charges of possessing narcotic drugs, narcotic drug vagrancy, and driving without permit did not make guilty plea, entered after consultation with counsel, involuntary although defendant's father, who advised a guilty plea, was helping to support defendant's family. *J. P. Thomas, Jr.*, v. *United States and District of Columbia* (D.C. App. 1964, 201 A. 2d 520).

4.50. Probable cause for arrest

Arrest by police officer after entering defendant's room without first announcing purpose for such entry was lawful and seizure following arrest was valid, where officer, on looking through a crack in a door, had seen defendant, surrounded by illegal narcotics accessories, injecting himself. *P. C. Reid* v. *United States,* D.C. App. 1964, 201 A. 2d 867).

Police, who were cruising area, had probable cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. *A. O. Freeman* v. *United States* (1963, 322 F. 2d 462, 116 U.S. App. D.C. 213).

Admission of testimony, at trial judge's request, that police officer had previously arrested defendant for narcotics violation was error which was prejudicial to defendant who did not take stand during his prosecution for narcotics violation.

Chapter 7.—REGULATIONS AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

§ 33-710. Arrest without warrant.

NOTES TO DECISIONS

1. Arrest without warrant

Defendant was not under arrest on day he was informed of conduct of investigation, was questioned for five minutes in his employer's presence, and went voluntarily to police headquarters to take polygraph test, nor on following day, when he returned to take test and, almost immediately after it, took police officer to automobile and gave him package containing employer's drug. *D. A. Fisher* v. *United States* (D.C. Mun. App. 1962, 183 A. 2d 553).

TITLE 35.—INSURANCE

Chap. Sec.
16. Credit Life, Accident and Health Insurance 35-1601

Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

§ 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

NOTES TO DECISIONS

1.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc.* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

§ 35-105. Statement of business in District of Columbia.

NOTES TO DECISIONS

1.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc.* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

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Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

NOTES TO DECISIONS

Benefit order 1
Engaging in insurance 1.50

1. Benefit order

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks, etc.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

1.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc.* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

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Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement where principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

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Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35–404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.

NOTES TO DECISIONS

Engaging in insurance .50
Jurisdiction 1
License requirements 2
Superintendent's authority 3
Trial de novo 4

.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n Inc.* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

1. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc.* v. *United Insurance Co. of America* (1961, 288 F. 2d 778, 110 U.S. App. D.C. 112).

2. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co.* v. *A. F. Jordan, Dep't of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

3. Superintendent's authority

Statute authorizing District of Columbia Superintendent of Insurance, upon satisfying himself by such investigation as he may deem proper or necessary, to refuse to issue or renew certificate, does not authorize superintendent to hold hearing, and grant of hearing by him on question of renewal of certificate was gratuitous. *A. F. Jordan, Sup't of Insurance etc.* v. *United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

4. Trial de novo

It was proper for District Court to grant trial de novo, rather than merely reviewing administrative record, in insurer's action against District of Columbia Superintendent of Insurance to set aside ruling denying renewal of certificate of authority, where statutes did not provide for administrative hearing, notwithstanding fact that superintendent had granted one. *A. F. Jordan, Sup't of Insurance etc.* v. *United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

§ 35–407. Annual statement—Verification—Failure to make.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31, immediately preceding, on forms furnished by the superintendent. Such statement shall be verified by the oaths of the president and secretary of the company, or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. If any such company shall fail to file the annual statement herein required, the Superintendent may thereupon revoke its certificate of authority to transact business in the District of Columbia. The Superintendent shall also have power to require that at least once in the month of March in each year a summary of such annual statement shall be published by the company in a daily newspaper published in the District. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 8; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88–193, § 1.)

AMENDMENT

1963—Act Dec. 5, 1963, amended section by striking the last sentence and adding thereto two new sentences beginning with the words "If any" and ending with the word "District."

§ 35–410. Contents of advertisements—Penalty for violation.

* * * * *

Provided, however, That this section shall not be deemed to prevent an alien company from furnishing to its policyholders in the District of Columbia its annual report to policyholders of its domicile.

* * * * *

(June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 11; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88–193, § 2.)

AMENDMENT

1963—Act Dec. 5, 1963, amended the section by adding at the end of the first paragraph the proviso clause above set out.

§ 35–414. False statements in application for insurance.

NOTES TO DECISIONS

Misrepresentation by beneficiary 6.50
Test of materiality 9.50

6.50. Misrepresentation by beneficiary

Misrepresentation by beneficiary, in his application for a life policy on his month-old daughter of fact that he had applied to another insurer for a similar policy, even if participated in by insurer's agent, was material and constituted a valid defense to recovery on the policy. *R. L. Jannenga* v. *National Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

9.50. Test of materiality

Test of materiality of a statement in an insurance application is whether the representation would reasonably influence insurer's decision as to whether it should insure. *R. L. Jannenga* v. *Nationwide Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

§ 35–425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged—False statements—Penalty.

* * * * *

Any such applicant who willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof.

* * * * *

(Added July 8, 1963, 77 Stat. 76, Pub. L. 88–57, § 1.)

AMENDMENT

1963—Act July 8, 1963, amended the section by adding the above sentence to follow the second sentence in the section.

NOTES TO DECISIONS

Predication of indictment 1
Propriety of regulation 2
Sufficiency of indictment 3
Weight of Superintendent's decisions 4

1. Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson* v. *United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

2. Propriety of regulation

Superintendent of insurance does not have power to promulgate regulations, and was not authorized to make felonious even a knowingly false answer to a question which Congress had not made material. *C. S. Nelson* v. *United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

3. Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson* v. *United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392.

4. Weight of Superintendent's decisions

Decision of superintendent of insurance for District of Columbia as to whether general insurance agent's license should be renewed must be given weight because of superintendent's special position in congressional regulatory plan. *A. F. Jordan, Superintendent of Insurance etc.* v. *J. Silverman* (1961, 294 F. 2d 916, 111 U.S. App. D.C. 132).

District Court's conclusion on appeal that action of superintendent of insurance for District of Columbia in refusing to renew general insurance agent's license should not be sustained was not in derogation of statutory responsibility of superintendent. *Id.*

Notwithstanding weight to be given decision of superintendent of insurance for District of Columbia to deny renewal of general insurance agent's license, evidence as a whole, consisting of administrative record and that additionally adduced before District Court, supported conclusion that action of superintendent should not be sustained. *Id.*

§ 35–427. Appeal from rulings of Superintendent—Procedure—Costs and supersedeas bond—Liability of Superintendent.

NOTES TO DECISIONS

Jurisdiction 2
Weight of Superintendent's decisions 3

2. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc.* v. *United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

3. Weight of Superintendent's decisions

Decision of superintendent of insurance for District of Columbia as to whether general insurance agent's license should be renewed must be given weight because of superintendent's special position in congressional regulatory plan. *A. F. Jordan, Superintendent of Insurance etc.* v. *J. Silverman* (1961, 294 F. 2d 916, 111 U.S. App. D.C. 132).

District Court's conclusion on appeal that action of superintendent of insurance for District of Columbia in refusing to renew general insurance agent's license should not be sustained was not in derogation of statutory responsibility of superintendent. *Id.*

Notwithstanding weight to be given decision of superintendent of insurance for District of Columbia to deny renewal of general insurance agent's license, evidence as a whole, consisting of administrative record and that additionally adduced before District Court, supported conclusion that action of superintendent should not be sustained. *Id.*

§ 35–428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation—False statement—Penalty.

* * * * *

Any such applicant who willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof.

* * * * *

(Added July 8, 1963, 77 Stat. 76, Pub. L. 88–57, § 1.)

AMENDMENT

1963—Act July 8, 1963, added the above sentence to follow the second sentence in the section.

Chapter 5.—DOMESTIC LIFE COMPANIES

Sec.
Sec. 35–515. Capital stock records—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.

§ 35–508. Capital-stock requirements.

(a) A domestic capital-stock company organized under chapters 3–8 of this title shall have a paid-up capital stock of not less than $200,000. Each domestic capital-stock company organized under chapters 3–8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 percent centum of such capital stock. Each domestic mutual company organized or doing business under chapters 3–8 of this title shall at all times have a surplus as defined by chapters 3–8 of this title of not less than $150,000.

(b) No company shall be exempt from the provisions of this section by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection, except that in the case of companies authorized in the District of Columbia on (date of passage) and continuously authorized thereafter without any increase or broadening of authority, the minimum capital required of a stock company shall not be increased by this section. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 8; May 4, 1950, 64 Stat. 104, ch. 157, § 4; Aug. 31, 1964, 78 Stat. 764, Pub. L. 88–556, § 1.)

AMENDMENT

1964—Section 1 of act Aug. 31, 1964, amended section by inserting (a) at the beginning of the section; striking "$100,000" in the first sentence and inserting "$200,000" and by adding subsection (b).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5 of act Aug. 31, 1964, provided: "This Act [amending sections 35–508, 35–509, 35–510, and 35–535] shall take effect on the first day of the first month which is at least ninety days after its approval."

§ 35–509. Amendment of articles of incorporation—Procedure.

Any company may amend its articles of incorporation upon publishing notice of such intention, authorized by a majority of its directors, once a week for three consecutive weeks in a newspaper of general circulation in the District, and with the written consent of stockholders representing at least two-thirds of the capital stocks entitled to vote, or two-thirds of its members present in person or by proxy at a meeting called for that purpose if it does not have capital stock, and by observing such other and further requirements in that behalf as may be prescribed in its articles of incorporation. Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with a copy of the proceedings of the stockholders or members, if any, and of the directors, shall be filed with the superintendent and by him submitted to the corporation counsel, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the superintendent. The amendment shall not take effect until the superintendent shall deliver to the company his certified copy of the amendment and of the certificate of the corporation counsel. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 9; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88–556, § 3.)

AMENDMENTS

1964—Section 3 of act Aug. 31, 1964, amended the first sentence by striking out "two-thirds of its stockholders" and inserting in lieu thereof the words "stockholders representing at least two-thirds of the capital stock entitled to vote".

EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 35–508.

§ 35–510. Increase of capital stock—Failure to subscribe and pay in within one year.

(a) If a company amend its articles of incorporation by providing for an increase of its capital stock, such increase shall be subscribed and fully paid up within one year of the date of such amendment, unless the superintendent shall certify his consent to an extension of such time. Failure to have such increase of capital stock paid up within the time provided may be considered grounds for ousting the company from its powers under any such amendment to such articles of incorporation by a court of competent jurisdiction in a proceeding by the superintendent, the corporation counsel representing him, against the company for such judgment.

(b) Subsection (a) hereof shall not be applicable to an amendment of the articles of incorporation providing for an increase of capital stock wherein said amendment provides that said increase will be reserved for issuance for—

(1) the acquisition of the ownership or control of another insurance company as an affiliate or subsidiary subject to the limitations of subsection 10(b) of section 35–535: *Provided, however,* That no such acquisition shall be consummated until it has been approved or ratified by stockholders representing at least a majority of the capital stock entitled to vote;

(2) the granting of options to officers or employees of the company to purchase authorized but unissued shares of stock of the company, for such consideration and upon such terms and conditions as may be fixed by the board of directors: *Provided, however,* That (a) at no time shall the number of shares reserved for this purpose exceed, in the aggregate, 5 per centum of the total authorized shares of stock of the company; (b) no more than 10 per centum of the total number of shares authorized to be optioned may be made available to any individual under any and all options issued to him by the company; (c) no option shall be promised or granted (1) to any individual employed by an insurance company authorized to do business in the District of Columbia (other than the company promising or granting the option or a subsidiary of the company promising or granting the option) while that individual is so employed, or (2) to any individual within two years following the termination of his employment with such an insurance company; (d) the option price of shares subject to any such option shall not be less than 95 per centum of the fair market value of such shares at the time the option is granted and shall be not less than the par value of such shares; (e) any such option shall not be transferable except by will or the laws of descent and distribution; (f) any such option shall not be exercisable after the expiration of 10 years from the time the option is granted; or

(3) the paying of stock dividends:

Provided, That at no time shall the number of shares of reserved unissued stock exceed the number of shares of issued and outstanding shares of stock of said company. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 10; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88–556, § 4.)

AMENDMENT

Section 4 of act Aug. 31, 1964, amended section by inserting (a) at the beginning of the section and by adding subsection (b) thereto.

EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 35–508.

§ 35–515. Capital stock records—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.

It shall be the duty of the directors of every domestic stock company to cause a record to be kept by the treasurer or secretary of the company or by the stock transfer agent of the company containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of capital stock held by them, respectively, the time when they became

owners of such shares, and the amount of capital stock actually paid in.

Such record shall, during the usual business hours of the day, on every business day, be open for inspection by policyholders, stockholders, creditors of the company, and the personal representatives of such policyholders, stockholders, and creditors at the office or principal place of business of such company in the place where its business operations shall be located in the District of Columbia, or at the office of the stock transfer agent located in the District of Columbia, and any policyholder, stockholder, creditor, or representative shall have a right to make extracts from such record.

Such record shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders.

Every officer, stock transfer agent, or any other agent of any company who shall neglect to make any proper entry in such record, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor and the company shall pay to the party injured a penalty of $50 for any such neglect or refusal, and all damages resulting therefrom.

Every company that shall neglect to have such record kept open for inspection, as herein provided, shall forfeit to the District the sum of $50 for every day it shall so neglect, to be sued for and recovered by the Superintendent, the Corporation Counsel representing him, in the United States District Court for the District of Columbia. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 15; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 20, 1964, 78 Stat. 556, Pub. L. 88–458, § 1.)

AMENDMENT

1964—Section 1, of act Aug. 20, 1964, amended section to read as above set out. For provisions of section prior to this amendment see main volume of the code.

§ 35–535. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

(1) Bonds, notes, or other evidences of indebtedness of the United States, any State, Territory, or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated; or obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development or by the Inter-American Development Bank.

* * * * *

(10)(a) * * *

* * * * *

(b) In addition to the investments authorized in paragraph (10)(a), common stocks of any insurance company (other than as prohibited in section 35–540) created under the laws of the United States, or by any State thereof, or the District of Columbia: *Provided, however,* That stocks may be acquired under this paragraph (10)(b) only (i) with the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary, (ii) if such acquisition will not cause the acquiring company's aggregate cost of investments under this paragraph to exceed, in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of $300,000, or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of $150,000, and (iii) after the Superintendent of Insurance of the District of Columbia has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of insurance, and will not impair the financial stability of the acquiring company.

* * * * *

(15) Any domestic life insurance company may also lend or invest its funds, to an extent that the cost of such investments shall not exceed in the aggregate the lesser of (i) 5 per centum of its total admitted assets, or (ii) in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of $300,000 or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of $150,000, in loans or investments (other than common stocks of insurance companies) not otherwise permitted under this section: *Provided, however,* That no company shall invest in excess of 1 per centum of its admitted assets in any one such loan or investment. The company shall keep a separate record of all loans and investments made under this subsection. In the event that, subsequently to being made under the provisions of this subsection, a loan or investment is determined to have become qualified under some other part of this section, the company may consider such loan or investment as being held under the applicable provision and such loan or investment shall no longer be considered as having been made under this subsection.

* * * * *

(Sept. 14, 1961, 75 Stat. 514, Pub. L. 87–245, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87–739, § 1; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88–556, § 2(a)(b).)

AMENDMENTS

1964—Section 2(a) of act Aug. 31, 1964, amended paragraph 10(b) clause (ii) to read as above set out. Section 2(b) of the same act amended paragraph (15) clause (ii) by striking out the words "the amount of capital, surplus, and contingency reserves in excess of $150,000" and inserted in lieu thereof the matter beginning with the words "in the case of" and ending with "$150,000".

1962—Act Oct. 3, 1962, amended clause (1) so as to permit investments in securities of the Inter-American Development Bank.

1961—Act Sept. 14, 1961, amended subsection (10) by designating it as subsection (10)(a) and by adding a new par. to said subsection designated as (10)(b).

EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 35–508.

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

§ 35–701. Superintendent to value policies—Legal standard of valuation.

* * * * *

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35–705b (the standard nonforfeiture law).

(1) The minimum standard for the valuation of all such policies and contracts shall be the Commissioners reserve valuation method defined in paragraph (2), 3½ per centum interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of the next to the last paragraph of section 35–705b(d), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of the last paragraph of section 35–701b(d), and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Superintendent.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the Superintendent, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Intercompany Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Superintendent.

(As amended Oct. 3, 1962, 76 Stat. 711, Pub. L. 87–738, § 1.)

AMENDMENTS

1962—Section 1 of act Oct. 3, 1962, amended paragraph (1) of subsection (c) to read as above set out. For provisions of this paragraph prior to this amendment see main volume of the Code.

§ 35–705b. Standard nonforfeiture law.

* * * * *

(d) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided, however,* That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed 4 per centum of the amount of insurance or uniform amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: *Provided, however,* That

in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii), and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in the next succeeding paragraphs of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding 3½ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

In the case of ordinary policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding 3½ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided,* That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1960, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-six.

In the case of industrial policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest, not exceeding 3½ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1962, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-eight.

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy in the event of default in the payment of any premium due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections

(b), (c), and (d) may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up be reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

* * * * *

(g) After February 19, 1948, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1950. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this section shall become operative with respect to the policies and contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1950: *Provided, however,* That the operative date of the last two paragraphs of subsection (d) shall be as stated therein. (As amended Oct. 3, 1962, 76 Stat. 712, Pub. L. 87–738, § 2.)

AMENDMENTS

1962—Section 2 of act Oct. 3, 1962, amended subsection (d) to read as above set out; subsection (e) by adding the matter set out in clause (v) and subsection (g) by changing the word "paragraph" in the last sentence to read "two paragraphs."

§ 35–710. Group life insurance.

* * * * *

(7) Any policy issued pursuant to this section, except a policy issued to a creditor pursuant to subsection (2) hereof, may be extended to insure the spouses and minor children of insured persons, or any class or classes thereof, subject to the following requirements:

(a) The premiums for the insurance shall be paid by the policy holder either from the policy holder's funds or from funds contributed by the insured person, or from both. If any part of the premium is to be derived from funds contributed by the insured persons, the insurance with respect to spouses and children may be placed in force only if at least 75 per centum of the then eligible employees or members of the organization or the association, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the insured persons, all such eligible employees or members of the organization or the association excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

* * * * *

(8) A policy of group life insurance issued to a credit union organized pursuant to the laws of the District of Columbia or pursuant to the Federal Credit Union Act, which credit union shall be deemed the policyholder, to insure members of the credit union for the benefit of persons other than the credit union, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the credit union, or all of any class or classes thereof determined by age, or by membership in the credit union, or both.

(b) The premium for the policy shall be paid by the policyholder, either from the credit union's own funds, or from charges collected from the insured members specifically for the insurance, or both. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issue.

(d) The amount of insurance on the life of any member shall not exceed the total amount of his shares and deposits in the credit union or $2,000, whichever is less. Such policy may be issued either in addition to, or in lieu of, a policy issued pursuant to section 35–710(2).

(9) A policy issued to a duly organized national veterans' organization which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members of such organization for the benefit of persons other than the organization, or any of its officials, representatives, or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all the members of the organization, or all of any class or classes thereof determined by conditions pertaining to their membership in the organization, or both.

(b) The premium for the policy shall be paid by the policyholder either wholly from the organization's funds, or partly from such funds and

partly from funds contributed by the insured members specifically for their insurance, or from funds wholly contributed by the insured members specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 60 per centum of the then eligible members or a minimum of four hundred members, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisafactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issuance.

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members, or by the organization. No policy may be issued which provides term insurance on any organization member which, together with any other term insurance under any group life insurance policy or policies, exceeds $20,000, unless 150 per centum of the annual compensation of such person exceeds $20,000, in which event all such term insurance shall not exceed $40,000, or 150 per centum of such annual compensation, whichever is less.

(Sept. 14, 1961, 75 Stat. 519, Pub. L. 87–249, § 1; Oct. 23, 1962, 76 Stat. 1131, Pub. L. 87–855, §§ 1, 2.)

REFERENCE IN TEXT

The Federal Credit Union Act, referred to in text, is set out as chapter 14, in Title 12 of the United States Code.

AMENDMENTS

1962—Act Oct. 23, 1962, amended section by adding subsection 9 thereto, as above set out.

1961—Act Sept. 14, 1961, amended section by adding subsection 8 thereto, as above set out.

CROSS REFERENCE

For provisions relating to amount of credit life, accident, and health insurance, see § 35–1604.

§ 35–711. Standard provisions for policies of group life insurance.

* * * * *

Provided, however, (a) That provisions (6) to (10), inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor, or to policies issued pursuant to section 35–710(8);

* * * * *

(Oct. 3, 1962, 76 Stat. 715, Pub L. 87–740, § 1.)

AMENDMENTS

1962—Act Oct. 3, 1962, amended clause (a) of the proviso in the first sentence by adding a comma after the word creditor and the words "or to policies issued pursuant to section 10(8) [35–710(8)] of this chapter.".

§ 35–717. Exemption of disability insurance from execution.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessaries contracted for after the commencement of disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16a.)

CODIFICATION

This section is set out in this supplement to correct a typographical error which appears in the main volume of the code.

Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

§ 35–907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

AMENDMENTS

1962—Section 2 of act Oct. 5, 1962, 76 Stat. 752, Pub. L. 87–757, amended the second sentence of the section by striking out the phrase "which shall not exceed fifty-five years and that medical examinations are required of applicants for life benefits".

Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

§ 35–1301. Short title.

NOTES TO DECISIONS

1. Labor organization

The 1940 act requiring that all fire, marine, and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

§ 35–1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.

NOTES TO DECISIONS

1. Labor organization

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

§ 35–1303. Definitions.

NOTES TO DECISIONS

Engaging in insurance .50
Labor organization 1

.50. Engaging in insurance

Statutes regulating business of insurance were not intended for application to all organizations having some

element of risk assumption or distribution in their operations. *Metropolitan Police Retiring Assn. Inc.* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 775, 113 U.S. App. D.C. 168).

The legislation relating to insurance in District of Columbia is so elaborate that court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. *Id.*

The absence of a profit motive and facts that Metropolitan Police Retiring Association possesses a representative government and engages in no solicitation of the public, add some though not controlling support to review that its activities are not within scope of statute primarily designed to protect insured vis-a-vis the insurer. *Id.*

Where Metropolitan Police Retiring Association was incorporated as a charitable organization, membership was limited to members of Metropolitan Police Department, the White House Police, and Park Police, purpose of association was to furnish financial relief to members in case of their retirement from police force, payments upon retirement were principally the amounts of retirees' own contributions with some increment of interest from investments which were required to be approved by majority of board of directors and by majority vote of membership in regular session, association was not engaged in "insurance" and hence was not required to obtain certificate of authority from Superintendent of Insurance. *Id.*

1. Labor organization

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

§ 35–1305. Certificate of authority—Necessity for—Expiration—Requirements.

NOTES TO DECISIONS

1. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co.* v. *A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

§ 35–1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.

A domestic company shall invest its funds only in—

(1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof; or obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development or by the Inter-American Development Bank.

* * * * *

(Oct. 9, 1940, 54 Stat. 1072, ch. 792, § 18, ch. II; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87–739, § 2.)

AMENDMENTS

1962—Act Oct. 3, 1962, amended clause (1) of section so as to permit investments in securities of the Inter-American Development Bank.

§ 35–1323. Foreign or alien companies, admission—Certificate of authority required.

NOTES TO DECISIONS

1. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co.* v. *A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

§ 35–1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

NOTES TO DECISIONS

1. Doing business

Activity of insurer, not licensed to do business in the District of Columbia, in issuing policy to resident of district, who entered into contract in district, was sufficient "doing business" to authorize substituted service on Superintendent of Insurance in insured's subsequent action against insurer, and such service was valid. *United States Liability Ins. Co.* v. *A. Handy* (D.C. Mun. App. 1961, 173 A. 2d 208).

§ 35–1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited—Penalties for perjury.

* * * * *

The person to whom the license may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the Superintendent may require.

* * * * *

(Amended July 8, 1963, 77 Stat. 76, Pub. L. 88–57, § 2.)

AMENDMENT

1963—Act July 8, 1963, amended the second sentence to read as above set out.

§ 35–1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal—False statements—Penalty.

Any applicant who, in connection with such application for renewal of an expiring license, willfully files with or otherwise submits to the Superintendent, orally or in writing, any material statement under oath, knowing such statement to be false, shall, in addition to any other penalty prescribed by law, be guilty of perjury and subject to the penalties thereof. (Added July 8, 1963, 77 Stat. 76, Pub. L. 88–57, § 3.)

AMENDMENT

1963—Act July 8, 1963, amended the section by adding the sentence above set out.

NOTES TO DECISIONS

.50. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co.* v. *A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

§ 35–1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.

NOTES TO DECISIONS

1. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Supt. of Insurance etc.* v. *United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

Chapter 16.—CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE

Sec.
35–1601. Title—Scope of chapter.
35–1602. Definitions.
35–1603. Forms of credit life insurance and credit accident and health insurance.
35–1604. Amount of credit life insurance and credit accident and health insurance.
35–1605. Term of credit life insurance and credit accident and health insurance.
35–1606. Provisions of policies and certificates of insurance—Disclosure to debtors.
35–1607. Filing, approval, and withdrawal of forms.
35–1608. Refunds.
35–1609. Claims.
35–1610. Existing insurance — Choice of insurer.
35–1611. Enforcement.
35–1612. Judicial review.

§ 35–1601. Title—Scope of chapter.

(a) This chapter regulating credit life insurance and credit accident and health insurance in the District of Columbia may be cited as "The Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance".

(b) All life insurance and all accident and health insurance in connection with loans or other credit transactions of less than five years duration in the District of Columbia shall be subject to the provisions of this chapter. Such insurance written in connection with a loan or other credit transaction of five years duration or more shall not be subject to the provisions of this chapter, nor shall such insurance be subject to the provisions of this chapter if the issuance of the insurance is an isolated transaction on the part of the insurer not related to a plan or regular course of conduct for insuring debtors of the creditor. (Sept. 5, 1962, 76 Stat. 580, Pub. L. 87–686, § 1.)

EFFECTIVE DATE

Section 14 of act Sept. 25, 1962, provides: "This Act [this chapter] shall take effect ninety days after its approval." [Sept. 25, 1962]

EFFECT OF REORGANIZATION PLAN NUMBERED 5 OF 1952

Section 13 of act Sept. 25, 1962, provided as follows: "Nothing in this Act [this chapter] shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act [this chapter] in the Commissioners or in any office or agency under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with section 3 of such plan."

§ 35–1602. Definitions.

For the purpose of this chapter—

(a) "Commissioners" means the Commissioners of the District of Columbia;

(b) "Credit life insurance" means insurance issued on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(c) "Credit accident and health insurance" means insurance against the disability of a debtor which provides indemnity for payments on a specific loan or other credit transaction;

(d) "Creditor" means the lender of money or vendor of goods, services, or property, including a lessor under a lease intended as a security, for which payment is arranged through a loan or other credit transaction, and includes any successor to the right, title, or interest of any such lender, vendor, or lessor;

(e) "Debtor" means a borrower of money or purchaser of goods, services, or property, including a lessee under a lease intended as a security, for which payment is arranged through a loan or other credit transaction;

(f) "District" means the District of Columbia;

(g) "Indebtedness" means the amount payable by a debtor to a creditor in connection with a loan or other credit transaction; and

(h) "Superintendent" means the Superintendent of Insurance of the District of Columbia. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87–686, § 2.)

§ 35–1603. Forms of credit life insurance and credit accident and health insurance.

Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(a) Individual policies of life insurance issued to debtors on the term plan;

(b) Individual policies of accident and health insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage;

(c) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(d) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability provisions in group life policies to provide such coverage. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87–686, § 3.)

§ 35–1604. Amount of credit life insurance and credit accident and health insurance.

(a) The amount of credit life insurance shall not exceed the initial indebtedness however the indebtedness may be repayable: *Provided, however,* That nothing contained herein shall be deemed to supersede or repeal the limitation on the amount of group insurance specified in section 35–710(2)(d). In cases where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at

no time exceed the scheduled amount of unpaid indebtedness in the case of any individual policy or the actual amount of the unpaid indebtedness in the case of any group policy.

(b) The amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87–686, § 4.)

§ 35–1605. Term of credit life insurance and credit accident and health insurance.

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurance company, commence on the date when the debtor becomes obligated to the creditor, except that where a group policy provides coverage with respect to existing obligations the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days from the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinaning prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewal or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 35–1608. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87–686, § 5.)

§ 35–1606. Provisions of policies and certificates of insurance—Disclosure to debtors.

(a) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy or in the case of group insurance by a group policy and individual certificates of insurance.

(b) Each individual policy or certificate of credit life insurance, each individual policy or certificate of credit accident and health insurance, and each individual policy or certificate of credit life insurance and credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurance company, and the identity by name or otherwise of the person insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit accident and health insurance, a description of the coverage, including the amount and term thereof (which in the case of group insurance may be by description rather than stated amount and term), any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, whenever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(c) Except as hereinafter provided, an individual policy or certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred.

(d) If a debtor makes a separate payment for credit life or credit accident and health insurance and an individual policy or certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance shall be delivered at such time to the debtor by the creditor. The copy of the application for or notice of proposed insurance shall be signed by the debtor and shall set forth the identity by name or otherwise of the person insured; the rate or amount of payment by the debtor separately for credit life insurance and credit accident and health insurance; and a statement that within thirty days, if the insurance is accepted by the insurance company, there will be delivered to the debtor an individual policy or certificate of insurance containing the name and home office address of the insurance company, and a description of the amount, term, and coverage including any exceptions, limitations, and restrictions. The copy of the application for, or notice of, proposed insurance shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this subsection is prominently set forth in such statement of account, instrument, or agreement. If a debtor does not make a separate payment for credit life or credit accident and health insurance, an application need not be taken or a notice of proposed insurance given. In any case, upon acceptance of the insurance by the insurance company, and within thirty days of the date upon which the term of the insurance commences, the insurance company shall cause the individual policy or certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that, upon acceptance by the insurance company, the insurance shall become effective as provided in section 35–1605. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87–686, § 6.)

§ 35–1607. Filing, approval, and withdrawal of forms.

(a) All forms of policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements and riders delivered or issued for delivery in the District and the premium rates pertaining thereto shall be filed with the Superintendent by the insurance company, in such manner and together with such supporting information as the Superintendent may reasonably require. In any case where a group policy is made for a group in the District and the policy is neither delivered nor issued for delivery in the District, the form of policy and all other forms and premium rates referred to

in the preceding sentence shall be filed with the Superintendent by the insurance company.

(b) The Superintendent may, within thirty days after the filing of any form of policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement or rider, disapprove any such form if the premium rates charged or to be charged appear by reasonable assumptions to be excessive in relation to benefits paid or to be paid, or if the form contains provisions which are unjust, unfair, inequitable, misleading, or deceptive. In determining whether to disapprove any such form the Superintendent may give due consideration to past and prospective loss experience within and outside the District, to underwriting practice and judgment to the extent appropriate, and to all other relevant factors within and outside the District, and he may take into account the experience of the individual company.

(c) If the Superintendent notifies the insurance company that the form does not comply with the requirements of this chapter, it shall be unlawful thereafter for such insurance company to issue or use such form. In such notice, the Superintendent shall specify the reason for his disapproval and state that a hearing will be granted promptly upon request in writing by the insurance company. No such policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider shall be issued or used until the expiration of thiry days after it has been so filed, unless the Superintendent shall give his prior written approval thereto.

(d) The Superintendent may, at any time after a hearing, held after not less than twenty days' written notice to the insurance company, withdraw his approval of any such form if it does not meet the requirements of this chapter.

(e) The insurance company shall not issue such forms or use them after the effective date of such withdrawal of approval.

(f) The insurance company may revise such forms and the premium rates pertaining thereto from time to time, and such revised forms and premium rates shall be filed with the Superintendent and shall be subject to all the preceding requirements of this section, in like manner as though they were original filings with the Superintendent. (Sept. 25, 1962, 76 Stat. 582, Pub. L. 87–686, § 7.)

§ 35–1608. Refunds.

(a) Each individual policy or certificate of credit life insurance or credit accident and health insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto: *Provided,* That the Superintendent shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the Superintendent who may disapprove such formula if he finds that it is unjust or unreasonable.

(b) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit accident and health insurance and an individual policy or certificate of insurance is not issued, the creditor shall promptly give written notice to such debtor and shall promptly make an appropriate credit to the account.

(c) The amount charged to a debtor for credit life or credit accident and health insurance shall not exceed the premium rate charged by the insurance company at the time the charge to the debtor is determined. (Sept. 25, 1962, 76 Stat. 583, Pub. L. 87–686, § 8.)

§ 35–1609. Claims.

(a) All claims shall be paid either by draft drawn upon the insurance company or by check of the insurance company to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified, and every insurance company shall be held to strict settlement of all such claims.

(b) It shall be unlawful for any creditor, having received any such check or draft from such insurance company, to fail to correctly credit the account, pay to or upon the direction of, or otherwise correctly account to the claimant to whom payment is due for the full amount of such check or draft, less any lawful deductions therefrom.

(c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurance company or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurance company in adjusting claims, nor, in the case of an individual creditor, shall the spouse of such creditor or any relative of the creditor or spouse within the third degree of consanguinity be so designated, nor shall any officer or employee of a corporate creditor or any spouse or relative of such officer, employee, or spouse within the third degree of consanguinity be so designated: *Provided,* That a group policyholder may, by arrangement with the group insurance company, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurance company. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87–686, § 9.)

§ 35–1610. Existing insurance—Choice of insurer.

When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the creditor may not require that the insurance be written through any particular insurance company or any particular agent, and the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurance company authorized to transact an insurance business within the District. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87–686, § 10.)

§ 35–1611. Enforcement.

(a) In the case of any violation of this chapter by an insurance company, agent, solicitor, or broker, the Superintendent shall have authority to proceed in accordance with the provisions of sections 35–405 and 35–426 and sections 35–1306 and 35–1340.

(b) In the case of any violation of this chapter by a creditor or by any other person not licensed in the District as an insurance agent, solicitor, or broker, regardless of the fact that such creditor or other person is not required by law to be so licensed, the penalties and the procedure for their imposition shall be as set forth in section 35–1347. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87–686, § 11.)

§ 35–1612. Judicial review.

Any insurance company, agent, solicitor, or broker aggrieved by any order or action of the Superintendent under this chapter may contest the validity of such order or action by appeal or through any other appropriate proceeding, in accordance with the procedures prescribed by sections 35–1348 and 35–1349: *Provided,* That any such insurance company, agent, solicitor, or broker which is licensed in the District under the Life Insurance Act approved June 19, 1934, as amended, may contest the validity of such order or action by appeal or through any other appropriate proceeding in accordance with the procedures prescribed by such Act approved June 19, 1934. (Sept. 25, 1962, 76 Stat. 585, Pub. L. 87–686, § 12.)

REFERENCES IN TEXT

The Life Insurance Act of June 19, 1934, referred to in text is set out in chapters 3, 4, 5, 6, 7, and 8 of Title 35, D.C. Code.

TITLE 36.—LABOR

Chapter 4.—MINIMUM WAGE LAW

SUBCHAPTER I.—MINIMUM WAGES

§ 36-401. Definitions.

CROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see title 40, §§ 327 to 332 and title 5, § 673c of the U.S. Code.

Chapter 5.—WORKMEN'S COMPENSATION

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

NOTES TO DECISIONS

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2. Accidental injury

Death of employee, who worked in mailing department of magazine publisher and who suffered from angina pectoris and whose work involved dragging heavy mail bags about 25 feet, "arose out of and in the course of his employment" and was due to "an accidental injury" within the meaning of Longshoremen's and Harbor Workers' Compensation Act. *M. T. Hancock, etc.* v. *C. Einbinder, Deputy Commissioner, etc.* (1962, 310 F. 2d 872, 114 U.S. App. D.C. 67).

5.50. Apportionment

Where death was validly found to have been attributable equally to two successive injuries occurring within scope of employment by different employers, liability was properly to be apportioned equally between employers and their respective insurers insofar as death benefits and medical and funeral expenses were concerned. *United Painters & Decorators et al.* v. *T. Britton, Deputy Commissioner etc.* (1962, 301 F. 2d 560, 112 U.S. App. D.C. 236).

10. Commissioner's finding of fact

Deputy commissioner's conclusion that claim was not compensable under Longshoremen's and Harbor Workers' Compensation Act was controlling, where there was factual and legal support for the conclusion. *Wolff etc.* v. *Britton, Deputy Commissioner, etc.* (1964, 328 F. 2d. 181, 117 U.S. App. D.C. 209).

12.50. Construction

Workmen's Compensation Acts are to be liberally construed. *J. F. Wynn, Jr.* v. *A. P. Kelley, et al.* (1963, 223 F. Supp. 875).

13.50. Course of employment

Record supported determinations that employee's death, occurring when employer's truck, driven by employee, crashed some five hours after last customer call, arose out of and in course of employment, and that death was not occasioned solely by intoxication. *Phoenix Assurance Co. of N.Y.* v. *T. Britton, Deputy Commissioner etc.* (1961, 289 F. 2d 784, 110 U.S. App. D.C. 118).

18.50. Employers duty

It was responsibility of employer to deny liability for compensation and medical benefits if it knew that claimant was not employee and to notify carrier accordingly so that compensation payments would not be started, and where employer did not do so, carrier had no duty to require formal hearing before starting compensation payments, and its failure to do so could not affect its right to recover premiums based on such payments. *Gilbert Slaughterers, Inc.* v. *United States Fidelity and Guaranty Co.* (D.C. Mun. App. 1962, 183 A. 2d 560).

Insurer's record containing computation of premiums due under policy was, under Federal Shop Book Rule, admissible in evidence in its action to recover premiums from insured. *Id.*

22. Evidence

Evidence sustained finding that employee's fall, in which he sustained fatal injuries, was not caused by his slipping or tripping on substances or objects associated with employment. *Wolff, etc.* v. *Britton, Deputy Commissioner, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

23. Exclusiveness of remedy

Workmen's compensation law was exclusive remedy of employees against employer for injuries sustained while employee was being driven home by another employee's husband, in accordance with arrangement made by employer. *M. H. Shreve* v. *Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

26.50. Increased coverage

Maryland statute providing for the exclusiveness of workmen's compensation remedies did not prevent Maryland employer from undertaking, in a union contract, to provide the increased coverage which would be applicable under District of Columbia law. *J. Nelson and R. M. Smith* v. *Victory Electric Works, Inc.* (1964, 227 F. Supp. 404).

Maryland's employer's project manager at construction site had at least apparent authority to execute an agreement for the employment of union carpenters under which corporate employer undertook to provide increases in Maryland workmen's compensation benefits to bring them up to levels provided under District of Columbia law. *Id.*

36. Limitation of action

That federal district court had appointed a committee of person and estate of employee who allegedly had improperly been paid compensation payments for hospital and/or institutional care did not give federal district court jurisdiction over compensation carrier's action to recover payments where compensation carrier's claim was time barred by Longshoremen's and Harbor Workers' Compensation Act. *Lumbermen's Mutual Casualty Company* v. *M. O. Brooke et al.* (1963, 219 F. Supp. 80).

46. Questions of law

Applicability of workmen's compensation law is question of law, for court, which erred in submitting question to jury. *M. H. Shreve* v. *Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

50. Review

Scope of review of findings of deputy commissioner is narrow. *United Painters & Decorators et al.* v. *T. Britton, Deputy Commissioner etc.* (1962, 301 F. 2d 560, 112 U.S. App. D.C. 236).

53. Sickness and disease

Employee's death was not compensable where employee died of massive cerebral edema caused when employee leaped upward and backward and then fell, striking back of his head, during a convulsive seizure while employee was on employer's premises during working hours. *Wolff etc.* v. *Britton, Deputy Commissioners, etc.* (1964, 328 F. 2d 181, 117 U.S. App. D.C. 209).

59. Third party, injury by

Question whether general contractor was a "third person" suable at common law by employee of subcontractor whose employees were covered by Workmen's Compensation Act was debatable law question where Court of Appeals had never decided question, and question had been resolved differently in other jurisdictions with similar statutes, and general contractor's settlement of personal injury claim of subcontractor's employee would not preclude indemnification from subcontractor on ground that employee's exclusive remedy was under Act. *Moses-Ecco Company, Inc.* v. *Roscoe-Ajax Corporation; Roscoe-Ajax Corporation* v. *Detwiler* (1963, 320 F. 2d 685, 115 U.S. App. D.C. 366).

60. Usual course of business

Mere fact that something unexpectedly goes wrong within human frame will not bar recovery under Longshoremen's and Harbor Workers' Compensation Act if injury, otherwise compensable, occurs when employee is engaged in his unusual and ordinary work. *Wolff etc.* v. *Britton, Deputy Commissioners, etc.* (1964, 328 F. 2d. 181, 117 U.S. App. D.C. 209).

Tort principles or common law concepts of scope of employment are not controlling in determining recoverability under the Longshoremen's and Harbor Workers' Compensation Act. *Id.*

61. Widow

Common-law marriage is recognized in District of Columbia. *E. Matthews* v. *T. Britton, Deputy Commissioner etc.* (1962, 303 F. 2d 408, 112 U.S. App. D.C. 397).

If parties agreed to be husband and wife in ignorance of impediment to lawful matrimony, removal of impediment results in common-law marriage between parties if they have continued to cohabit and live together as husband and wife; the same result obtains even if parties have knowledge of impediment at time that they agree to be married. *Id.*

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Id.*

62. Zone of special danger

Obligations or conditions of employment must create a "zone of special danger" out of which injury arose if there is to be recovery under Longshoremen's and Harbor Workers' Compensation Act. *Wolff etc.* v. *Britton, Deputy Commissioner, etc.* (1964, 328 F. 2d. 181, 117 U.S. App. D.C. 209).

TITLE 38.—LIENS

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

§ 38–101. Mechanic's lien.

NOTES TO DECISIONS

Owners rights 3.50
Preferential treatment 3.51

3.50. Owner's rights

Subcontractor who filed mechanic's lien for value of certain equipment he installed recognized that property owner's right to immediate possession of such equipment was superior to his own. *National Brick and Supply Co. Inc.* v. *W. E. Baylor et al., Trustees etc.; A. Grunstein etc.* v. *W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73)

Contract for making alterations and additions to church building did not authorize contractor or subcontractor to remove and not replace materials where progress payment had been made in reliance on presence of such equipment. *Id.*

3.51. Preferential treatment

Enforcement of claim of heating contractor for amount due on contract with owners to complete work begun by contractor under subcontract with defaulting building corporation did not contravene public policy reflected in mechanics' lien law on theory that heating contractor would receive preferential treatment over building corporation's other subcontractors. *W. E. Baylor et al.* v. *H. Bortolussi etc.* (D.C. App. 1963, 194 A. 2d 653).

§ 38–103. Subcontractor.

NOTES TO DECISIONS

Contractor paid in full 1.50
Subcontractor's rights 5.50

1.50. Contractor paid in full

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. *National Brick and Supply Co. Inc.* v. *W. E. Baylor et al., Trustees etc.; A. Grunstein etc.* v. *W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

5.50. Subcontractor's rights

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractors who had filed mechanic's liens were entitled to share. *National Brick and Supply Co. Inc.* v. *W. E. Baylor et al., Trustees etc.; A. Grunstein etc.* v. *W. E. Bayler et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

§ 38–104. Conditions.

NOTES TO DECISIONS

1. Lienholder's rights

Trial judge's findings as to balance of contract price which remained unexpended after owner had completed work following prime contractor's abandonment of work before completion, and against which subcontractors could enforce their mechanic's liens, were not clearly erroneous, in view of conflicting evidence supporting findings. *National Brick & Supply Co., Inc., etc. and A. Grunstein et al.* v. *W. E. Baylor etc.* (1963, 324 F. 2d. 892, 117 U.S. App. D.C. 14).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer* v. *Old Stein Grill et al.* (1961, 194 F. Supp. 274).

§ 38–106. Owner's duty.

NOTES TO DECISIONS

Contractor paid in full 1
Subcontractor's rights 4

1. Contractor paid in full

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. *National Brick and Supply Co., Inc.* v. *W. E. Baylor et al., Trustees etc.; A. Grunstein etc.* v. *W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

4. Subcontractor's rights

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractors who had filed mechanic's liens were entitled to share. *National Brick and Supply Co. Inc.* v. *W. E. Baylor et al., Trustees etc.; A. Grunstein etc.* v. *W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer* v. *Old Stein Grill et al.* (1961, 194 F. Supp. 274).

§ 38–107. Subcontractor entitled to know terms of contract.

NOTES TO DECISIONS

1. Subcontractor's knowledge of terms

Subcontractor was chargeable with notice of terms of general contract. *National Brick and Supply Co. Inc.* v. *W. E. Baylor et al., Trustees etc.; A. Grunstein etc.* v. *W. E. Baylor et al., Trustees etc.* (1962, 299 F. 2d 454, 112 U.S. App. D.C. 73).

§ 38–110. How lien enforced.

NOTES TO DECISIONS

4.50. Clearly erroneous

In action to enforce a mechanic's lien for labor and materials in remodeling of defendant's property, finding of the district court that there was due the plaintiff $7,750 was not "clearly erroneous". *J. W. Curtis* v. *R. A. Chambers* (1962, 310 F. 2d 857, 114 U.S. App. D.C. 52).

§ 38–124. Artisans lien.

NOTES TO DECISIONS

1. Enforcement in Municipal Court

Municipal Court for the District of Columbia had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed $3,000. *N. Villacres* v. *E. G. Haddad et ano.* (D.C. Mun. App. 1962, 184 A. 2d 634).

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Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. *Id.*

§ 38–126. Enforcement by bill in equity.

NOTES TO DECISIONS

1. Enforcement in Municipal Court

Municipal Court for the District of Columbia had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed $3,000. *N. Villacres* v. *E. G. Haddad et ano.* (D.C. Mun. App. 1962, 184 A. 2d 634).

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. *Id.*

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

§ 38–205. Lien for storage, repairs and supplies for motor vehicles.

(a) All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle at any time they may have lawful possession thereof. Such lien shall have priority over every security interest and other lien or right in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, every secured party and other lien holder shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to which may be added a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of $3 per day or $21 per week, which additional charge shall in no event cover a period in excess of ninety days.

(b) As used in this section, "security interest" and "secured party" have the same meanings as those given to the terms by sections 28:1–201 and 28:9–105(i), respectively, of the District of Columbia Code. (June 3, 1952, 66 Stat. 97, ch. 361, § 2; Dec. 30, 1963, 77 Stat. 770, Pub. L. 88–243, § 5.)

AMENDMENT

1963—Section 5 of act Dec. 30, 1963, amended section to read as above set out. For provisions of section prior to this amendment, see main volume of the code.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

NOTES TO DECISIONS

Damages from loss of lien 4.50
Possession 7
Reinstatement of lien 8

4.50. Damages from loss of lien

Automobile transmission repairer who did not establish extent to which value of garage keeper's lien was diminished by defendant's delivering possession of automobile to owner and who did not prove that he could not collect his bill from owner without resort to his lien did not sufficiently establish damage resulting from claimed loss of lien for charges in repairing transmission when owner left district without paying transmission work. *L. Flanzbaum* v. *S. Gordon* (D.C. App. 1963, 194 A. 2d 135).

Automobile transmission repairer who refused to pay electrician's charges for repairs on automobile which transmission repairer had delivered to electrician and who said that owner would have to pay them and that owner could take automobile if he wanted it could not recover from electrician for amount of his charges when when electrician pursuant to his instructions delivered automobile to owner who left District without paying transmission repairer. *Id.*

7. Possession

Independent garageman with whom conditional seller stored repossessed automobile had, in absence of proof of principal-agent relationship with seller, a lien for all reasonable charges for storage of automobile whether incurred by conditional buyer or by conditional seller, and had right to detain such automobile until storage charges had been paid. *C. Jackson* v. *B. Greenfield* (D.C. App., 1964, 198 A. 2d 916).

8. Reinstatement of lien

Garage Keeper's lien is not lost by releasing automobile, but may be enforced thereafter if garage keeper should again obtain lawful possession. *L. Flanzbaum* v. *S. Gordon* (D.C. App. 1963, 194 A. 2d 125).

After electrician, who had received possession of automobile from plaintiff who had repaired transmission, had delivered possession to owner, plaintiff's garage keeper's lien was in state of suspended animation and was not extinguished. *Id.*

Chapter 3.—OPERATORS' PERMITS

§ 40–301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit.

(a) * * *

* * * * *

(2) The Commissioners or their designated agent may, upon application and the payment of a fee of $5, issue a learner's permit, valid for a period of sixty days, to any applicant for a motor vehicle operator's permit, sixteen years of age or over, who has successfully passed all parts of the examination other than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to operate a passenger motor vehicle, used solely for purposes of pleasure and not for compensation, when accompanied by the holder of a valid motor vehicle operator's permit who is occupying a seat beside such permittee.

* * * * *

(Amended Oct. 3, 1962, 76 Stat. 710, Pub. L. 87–737, § 1; Mar. 18, 1964, 78 Stat. 167, Pub. L. 88–287, § 1)

AMENDMENTS

1964—Act Mar. 18, 1964, increased the fee for learner's permits from $2 to $5.

1962—Act Oct. 3, 1962, increased the fee for learner's permits from $1 to $2.

NOTES TO DECISIONS

Law governing 7
Restoration of permit 10.50

7. Law governing

Law of Maryland, which was place of actionable wrong, governed in determining liability of mother who signed application for minor's driver's license from District of Columbia. *M. P. Tsoy etc.* v. *L. MacFarland et ano.* (1963, 219 F. Supp. 220).

Maryland statute imputing motor vehicle negligence of minor to person who signed his application for operator's permit applies only to one signing application for Maryland permit. *Id.*

10.50. Restoration of permit

Director of Motor Vehicles did not abuse his power when he denied application of petitioner, who had accumulated 17 points for traffic violations, for restoration of operator's permit. *T. Thalis* v. *G. A. England, Director of Motor Vehicles etc.* (D.C. App. 1963, 193 A. 2d 855).

§ 40–302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided,* That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further,* That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further.* That application to said Commissioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

An individual whose permit is denied, suspended, or revoked by the commissioners or their agent may, if application for a review by the commissioners of an order for revocation or suspension is not filed, or if an application for review by them is filed, after the commissioners' decision on the review, petition the District of Columbia Court of Appeals for a review of the order or decision in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code.

* * * * *

(As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 8.)

AMENDMENTS

1963—Section 8 of act Dec. 23, 1963, amend subsection (a) by striking out the fourth proviso in the first sentence; by striking out the colon preceding that proviso and inserting a period in lieu thereof and by striking the second sentence and inserting in lieu thereof a new second sentence as above set out beginning with the words, "An individual".

NOTES TO DECISIONS

Authority to revoke 3
Operating vehicle after revocation 6
"Operator" defined 7

3. Authority to revoke

Neither order of Commissioners of District of Columbia giving Director of Motor Vehicles full authority to act for Commissioners in suspension of operator's permit nor statute authorizing Commissioners or their designated agents to suspend operator's permit where there has been breach of usual and reasonable rules and regulations made concerning control of traffic authorized Director of Motor Vehicles to suspend operating permit of petitioner merely because petitioner violated regulation providing that no owner of motor vehicle shall allow it to be operated by any individual who is not duly licensed operator. *F. Justin Mason* v. *Director of Motor Vehicles etc.* (D.C. Mun. App. 1962, 186 A. 2d 893).

Director of Motor Vehicles did not exceed his discretionary power in revoking driver's license on ground that licensee who had been convicted of housebreaking, larceny, and destroying movable property and who had previously been convicted of crimes in 1940, 1941, 1952, 1958, 1960 was morally unfit to operate a motor vehicle. *S. W.*

James v. *Director of Motor Vehicles, etc.* (D.C. App. 1963, 193 A. 2d 209).

Driver's crimes were not required to be connected with operation of motor vehicle to authorize finding that license should be revoked on ground that he was not morally qualified to drive. *Id.*

Driver's license is privilege which may be denied as long as danger exists that licensee will make unlawful use of automobile jeopardizing safety of persons or property. *Id.*

Proof of commission of a crime, regardless of its nature, is not sufficient to disqualify a person from holding a driver's license. *Id.*

6. Operating vehicle after revocation

Although operating permit would have been restored to driver had he promptly applied for restoration at end of suspension period, driver who drove vehicle thereafter without obtaining official restoration was guilty of driving vehicle while operating privilege was suspended. *J. L. Brown* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 925).

7. "Operator" defined

Evidence supported finding that defendant, who had been seen behind wheel manipulating automobile's controls after collision had occurred, and who was charged with driving while permit was revoked, was "operator" of vehicle within statute providing penalty for driving while permit is revoked. *D. W. Jackson, Jr.* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 885).

Chapter 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

§ 40–418. Definitions.

NOTES TO DECISIONS

5. Owners and ownership

Holding automobile registration certificate at the time of accident is not conclusive as to ownership within Motor Vehicle Safety Responsibility Act, notwithstanding statutory definition of owner as one who holds legal title of a vehicle. *H. Johnson et ano.* v. *G. Keyes* (D.C. App. 1964, 201 A. 2d 24).

To determine ownership of automobile for purpose of applying Motor Vehicle Safety Responsibility Act, it is necessary to look to purpose of statute, namely, to place liability upon person in position immediately to allow or prevent use of vehicle and to do so by giving lawful and effective consent or prohibition as to its operation by others. *Id.*

§ 40–423. Service of process on nonresident.

NOTES TO DECISIONS

.50. Administrator

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *G. J. O'Sullivan* v. *A. G. Hicks* (1963, 313 F. 2d 900, 114 U.S. App. D.C. 219).

§ 40–424. Operator deemed to be agent of owner.

NOTES TO DECISIONS

Agency based on consent 3
Burden of proof 5
Evidence overcoming presumption 11
Negligent hiring 15.50
Purpose 20
Questions of fact 21
Unauthorized use 24

3. Agency based on consent

Lessor of truck having notified lessee, pursuant to provisions of lease, that given employee of lessee must no longer be permitted to drive truck could not, under statute, be presumed to have permitted such employee of lessee to drive, and, in absence of some further showing against lessor, it was entitled to directed verdict when sued for injuries sustained by reason of such employee's conduct while driving leased truck. *R. V. Neary* v. *The Hertz Corporation et al.* (1964, 231 F. Supp. 480).

5. Burden of proof

Owner of automobile operated by another must prove that it was not being driven with his consent at time of accident to avoid liability for any negligence of driver, but presumption may be rebutted by uncontradicted denial by owner that vehicle was being operated with his consent. *J. P. Lancaster et ano.* v. *R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Owner's lending of automobile to pharmacy as matter of courtesy for making small deliveries by pharmacy employees did not make pharmacy a co-owner of automobile within statutory presumption that in case of accident driver of automobile is owner's agent. *Id.*

Under statute providing that automobile operator in case of accident is deemed to be the agent of automobile owner, a presumption of agency is created upon proof of ownership and imposes upon owner the affirmative duty of proving that at time of accident the vehicle was not operated with his express or implied consent. *H. R. Miller* v. *Imperial Insurance Inc.* (D.C. App. 1963, 189 A. 2d 359).

Under statute providing that automobile operator in case of accident shall be deemed to be the agent of automobile owner, presumption of agency can be overcome by uncontradicted proof sufficient to destroy the inference. *Id.*

Where trial court concluded that mother who was owner of automobile had not overcome the presumption that her 18-year-old son who was operating the vehicle at the time of the accident was her agent, the Court of Appeals could not say the decision was wrong as a matter of law even though 18-year-old son confirmed his mother's testimony that she had refused him permission to use the automobile and that he had taken keys and registration card from her purse, where there were circumstances which left question of mother's permission open to doubt. *Id.*

11. Evidence overcoming presumption

Evidence authorized finding that automobile title holder sued for property damage arising out of collision when automobile was being driven by her husband had mere naked legal title to and no immediate right of control of automobile, which husband had taken with him at time of marital separation before accident. *H. Johnson et ano.* v. *G. Keyes* (D.C. App. 1964, 201 A. 2d 24).

Automobile title holder who did not have power to allow or prevent use of automobile by her husband at time husband was involved in accident was not "owner" of automobile within Motor Vehicle Safety Responsibility Act. *Id.*

Evidence raised fact question whether automobile title holder who was sued for property damage allegedly caused when automobile was involved in collision while being operated by holder's husband and who testified that upon occurrence of marital separation before accident husband took automobile with him had given consent for operation of automobile at time of collision. *Id.*

Positive statements of automobile owner that he had never given employee of pharmacy, which borrowed automobile, right to drive automobile after business hours and that he had never known of pharmacy employee doing so destroyed any presumption that automobile was being used with his permission at time of accident and owner was not liable for injuries resulting from employee's negligence. *J. P. Lancaster et ano.* v. *R. J. Canuel et ano.* (D.C. App. 1963, 1933 A. 2d 555).

Statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission. *E. M. Jones, Sr.* v. *J. Halun* (1961, 296 F. 2d 597, 111 U.S. App. D.C. 340).

15.50. Negligent hiring

Recovery under theory of alleged negligent hiring of negligent employee requires proof that employer omitted use of ordinary care in selection of employee unfit to perform services for which he was hired, but no liability attaches to employer unless incompetency or unfitness of servant was proximate cause of injury. *J. P. Lancaster et ano.* v. *R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Parties injured by automobile being driven for personal purposes by employee of pharmacy, to which automobile had been lent, were not entitled to recover from pharmacy on ground of alleged negligent hiring of employee, where there was no showing of unfitness of employee to perform services rendered, including operation of two motor vehicles in course of his duties at pharmacy. *Id.*

20. Purpose

Object of Motor Vehicle Safety Responsibility Act was not to impose liability on one having naked legal title to automobile with no immediate right of control. *H. Johnson et ano.* v. *G. Keyes* (D.C. App. 1964, 201 A. 2d 24).

21. Questions of fact

Whether automobile owner whose keys were removed while he was asleep at a home where he had gone with one who drove his automobile in collision had given permission to him to use automobile was question for trier. *H. M. Hancock et ano.* v. *C. L. Morris* (D.C. Mun. App. 1961, 173 A. 2d 922).

24. Unauthorized use

Inasmuch as employee admitted that he took automobile from his employer's lot in order to drive on his own errand after hours of employment and to achieve no objective directly or indirectly furthering his employer's business, employer was not liable to persons injured by employee's careless operation of automobile. *J. P. Lancaster et ano.* v. *R. J. Canuel et ano.* (D.C. App. 1963, 193 A. 2d 555).

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by companion of owner's son and it appeared that owner had forbidden son to let anyone else drive automobile. *E. M. Jones, Sr.* v. *J. Halun* (1961, 296 F. 2d 597, 111 U.S. App. D.C. 340).

§ 40–464. Discharge in bankruptcy.

NOTES TO DECISIONS

1. Restatement of operator's permit

Plaintiff was not entitled to reinstatement of his motor vehicle operator's permit or motor vehicle registration privileges where he failed to satisfy judgment obtained against him arising out of operation of a motor vehicle, and fact judgments were not revived after expiration of statute of limitations and were discharged in bankruptcy, did not entitle plaintiff to renewal of such privileges. *G. A. Le* v. *G. A. England et al.* (1962 206 F. Supp. 957).

Chapter 5.—PUBLIC-OWNED VEHICLES

§ 40–501. Motor vehicles to be marked.

REPEATED

1964—Aug. 22, 1964, 78 Stat. 592, Pub. L. 88–479, § 10.
1963—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88–252, § 10.
1962—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87–867, § 10.

USE OF PUBLICLY OWNED VEHICLES

All motor-propelled passenger-carrying vehicles (including watercraft) owned by the District of Columbia shall be operated and utilized in conformity with section 16 of the act of August 2, 1946 (5 U.S.C. 77, 78), and shall be under the direction and control of the Commissioners, who may from time to time alter or change the assignment for use thereof, or direct the alteration of interchangeable use of any of the same by officers and employees of the District, except as otherwise provided in this act. "Official purposes" shall not apply to the Commissioners of the District of Columbia or in cases of officers and employees the character of whose duties makes such transportation necessary, but only as to such latter cases when the same is approved by the Commissioners. (Sept. 21, 1961, 75 Stat. 564, Pub. L. 87–265, § 10.)

REFERENCE IN TEXT

Section 77 of Title 5, U S.C., was repealed by act June 30, 1949, 64 Stat. 590, and is now covered by section 491, Title 40, U.S.C.

§ 40–502. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(33) renumbered and added Sept. 5, 1950, ch. 849, § 7(d), 64 Stat. 590.

Section dealt with the use of appropriated funds for the purchase, maintenance, driving or operating any carriage or vehicle for the personal or official use of any officer or employee of any of the Executive Departments or other government establishments at Washington, District of Columbia, without specific authorizations or specific markings. The section was based on act Feb. 3, 1905, 33 Stat. 687, ch. 297, § 4. It was amended to read as follows by act Aug. 2, 1946, ch. 744, 60 Stat. 811, section 16(b). "All motor vehicles acquired and used for official purposes of the departmental service in the District of Columbia shall have conspicuously imprinted thereon at all times the full name of the executive department or other branch of the public service to which the same belong and in the service of which the same are used."

The section as amended was repealed by act of June 30, 1949, ch. 288, title VI, section 602(a)(33) as renumbered and added by act Sept. 5, 1950, ch. 849, section 7(d), 64 Stat. 590. The subject matter is now covered by subsection (k) of section 491, Title 40, U.S.C.

§ 40–503. Omitted.

CODIFICATION

This section was predicated on section 40–502. However, section 40–502 as amended by the act of Aug. 2, 1946, ch. 744, 60 Stat. 811, section 16(b), was repealed by the act of June 30, 1949, ch. 288, title VI, section 602(a)(33) as added by the act of Sept. 5, 1950, ch. 849, section 7(d), 64 Stat. 590. Since the section on which this section was based is repealed, it is omitted. The section read as follows: "Section 40–502 shall apply to carriages, motor, and other vehicles owned by and used in the several branches of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1.)"

Chapter 6.—REGULATION OF TRAFFIC

§ 40–603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director — Congressional tags — Titling — Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations — Signs on highways — Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.

(a) The Commissioners of the District of Columbia are authorized and empowered to make, modify, repeal, and enforce usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance, suspension, and revocation of operators' permits and the suspension and revocation of operating privileges, including rules and regulations assessing reasonable fees to reimburse the District for the cost of restoring suspended or revoked operators' permits and privileges, such fees not to exceed the amount of $5 per restoration and to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the commissioners may exercise the same through such officers or agents of the District as the commissioners may designate: *Provided,* That no member of the Metropolitan Police Department

may be empowered to perform any function under this chapter other than in the enforcement thereof.

* * * * *

(As amended, Oct. 3, 1962, 76 Stat. 742, Pub. L. 87–745, § 1.)

AMENDMENTS

1962—Act Oct. 3, 1962, amended subsection (a) by striking out the words "issuance and revocation of operator's permits" and inserting in lieu thereof the words beginning with "issuance" and ending with "$5 per restoration".

NOTES TO DECISIONS

Commissioner's discretion 2.50
Validity of amended sentence in absentia 13.50

2.50. Commissioners' discretion

The designation by commissioners of the District of Columbia of intersections for installation of traffic control signals is essentially legislative in character and is result of commissioners' exercise of discretion and judgment, and failure to establish signal at intersection was not such negligence as would make District liable for death of pedestrian who was killed by motor vehicle while crossing street. *E. C. Urow, Administratrix etc.* v. *District of Columbia* (1963, 316 F. 2d 351, 114 U.S. App. D.C. 350).

Complaint alleging that negligence of District of Columbia in failing to provide traffic control device at intersection caused death of plaintiff's decedent who was struck by motor vehicle while crossing street did not state claim for relief within exception to general rule of municipal immunity with regard to obligation to keep streets in safe condition after being put on notice of defect. *Id.*

13.50. Validity of amended sentence in absentia

Where defendant had not been present when illegal sentence for traffic violation had been amended and he had not been given right to make statement in his own behalf, he was entitled to have case remanded for resentencing. *D. H. Monette* v. *District of Columbia* (D.C. App. 1964, 201 A. 2d 875).

§ 40–604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

CROSS REFERENCE

Deposit of fees in special account in highway fund, see section 40–808.

§ 40–609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

NOTES TO DECISIONS

Evidence 4
Scope of employment 11.50

4. Evidence

Evidence tending to identify defendant as driver of striking vehicle was insufficient to sustain conviction for colliding with another vehicle and leaving after colliding. *J. R. Peterson* v. *District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 95).

Conviction for a criminal offense requires more support than a mere possibility that accused was person who committed the crime. *Id.*

Evidence sustained conviction for driving an automobile while under influence of intoxicating liquor. *F. H. Kruse* v. *District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 752).

Where two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of trial court. *Id.*

11.50. Scope of employment

An assault committed by employee-motorist in course of giving information required by statute after having been involved in automobile accident while about business of employer is within scope of employment, rendering employer liable. *R. V. Neary* v. *The Hertz Corporation, et al.* (1964, 231 F. Supp. 480).

Flight of employee-motorist from scene of vehicle collision, involving chase by owner of other vehicle over several miles and over a period of 15 to 30 minutes, did not constitute a turning aside by employee-motorist from business of principal in which he was engaged at time of collision, and, accordingly, assault which he committed upon other motorist who was pursuing him in effort to get identification data required by statute was not an independent trespass, but the employer was liable therefor. *Id.*

§ 40–609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to person tested—Blood tests—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.

NOTES TO DECISIONS

2. Rule of evidence in administrative proceedings

Statute providing that, in prosecutions for operating motor vehicle while under influence of intoxicating liquor, result of chemical analysis of blood, urine or breath may be prima facie proof that defendant was under influence of intoxicating liquor has no application to administrative proceeding. *H. E. Lister* v. *G. A. England* etc. (D.C. App. 1963, 195 A. 2d 260.)

Result of chemical analysis of blood, urine or breath cannot be received in evidence in hearing before Department of Motor Vehicles to determine whether privilege to operate motor vehicle shall be revoked unless accompanied by expert testimony of witness qualified to interpret the result. *Id.*

Finding of hearing officer, who, in hearing to determine whether privilege to operate motor vehicle should be revoked, attempted to apply statutory standard for determining intoxication on basis of urinalysis without expert testimony of witness qualified to interpret result could not stand. *Id.*

§ 40–616. Parking meters.

CROSS REFERENCE

Deposit of fees in special account in highway fund, see section 40–808.

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

§ 40–701. Definitions.

"Person" shall include one or more individuals, firms or unincorporated associations, or corporations.

"Director" shall mean the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

"Recorder" shall mean the recorder of deeds of the District of Columbia, including assistants or agents duly designated by the recorder.

"Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the director.

"Owner" shall mean the person to whom such certificate is issued by the director.

"Lien" shall mean any right or interest in or to, any security interest as defined in section 28:1–201 of the District of Columbia Code in, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except (1) a sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it, or (2) any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

"Instrument" shall mean any security agreement, as defined in section 28:9–105(h) of the District of Columbia Code, creating such lien.

"Lien information" shall mean the amount, kind, date of lien, name and address of holder or secured party as defined in section 28:9–105(i) of the District of Columbia Code, and recorder's record number, if any. (July 2, 1940, 54 Stat. 736, ch. 527, § 1, Dec. 30, 1963, 77 Stat. 771, Pub. L. 88–243, § 6(a).)

AMENDMENTS

1963—Section 6(a) of act Dec. 30, 1963, amended the definitions of "Lien," "Instrument" and "Lien information" to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

CROSS REFERENCE

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see §§ 28:9–203 and 28:9–302.

§ 40–702. Lien to appear on certificate of title—Effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth: *Provided,* That the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against a motor vehicle or trailer for which a certificate is outstanding at the effective date of this chapter, or any equipment or accessories affixed thereto. The filing provisions of Article 9 of Subtitle I of Title 28 of the District of Columbia Code do not apply to liens recorded as herein provided, and a lien has no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with that article. (July 2, 1940, 54 Stat. 736, ch. 527, § 2; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88–243, § 6(b).)

AMENDMENT

1963—Section 6(b) of act Dec. 30, 1963, amended the second sentence of the section to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

§ 40–704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

An instrument shall be in writing; shall show the name and address of the holder, the trade name and engine, serial or identification number of the motor vehicle or the trade name and serial number, if any, of the trailer; shall be signed by the parties. A lien shall not be entered upon a certificate unless (1) the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership; or (2) such an instrument is presented for recording pursuant to the provisions of this chapter; or (3) the lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (July 2, 1940, 54 Stat. 737, ch. 527, § 4; June 4, 1952, 66 Stat. 100, ch. 365, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88–243, § 7.)

AMENDMENT

1963—Section 7 of act Dec. 30, 1963, amended the first sentence by striking out at the end thereof the words, "and acknowledged by the owner in the manner provided by law for deeds of real estate."

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

§ 40–706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show under oath whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the recorder from the director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application and not entitled to be entered on the certificate in the same order as they appear on the application the recorder shall return all of said papers to the director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the director, who shall thereupon deliver same to a representative of the collector of taxes of the District of Columbia, stationed in the office of the director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the director. The director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon a card, the size of which shall be fixed by the director, the information stamped by the director on the face of such certificate and shall deliver such certificate, its application card, if any, and the identification-tag application to the recorder. If the application for title shows no liens, the recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No

Liens Shown By Records" and the date. If the application shows liens, the recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on the said card. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the recorder. The recorder shall then deliver both applications and the papers attached and the certificate to the director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88–89, § 1.)

AMENDMENTS

1963—Section 1 of act Aug. 5, 1963, amended the sixth sentence of the section by striking "each of two cards" and "cards" and inserting in lieu thereof respectively "a card" and "card" and by striking from the eighth sentence "each of the said cards" and inserting in lieu thereof "the said card".

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40–701.

§ 40–707. Entry of lien on previously issued certificate.

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the recorder in the office of the director and upon the payment of the necessary fees to the representative of the recorder of deeds of the District of Columbia in the office of the director the recorder shall accept the instruments for recording and unless he has a card covering said motor vehicle or trailer the director shall stamp a card in the manner set forth in section 40–706. The recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on said card and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88–89, § 2.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40–701.

AMENDMENTS

1963—Section 2 of act Aug. 5, 1963, amended the first sentence by striking "cards" where same appears and inserting in lien thereof "a card" and the second sentence by striking therefrom "each of said cards" and inserting in lieu thereof "said card".

§ 40–708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the recorder of deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon the card hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on the said card opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8; June 4, 1952, 66 Stat. 100, ch. 365, § 2; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88–89, § 3; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88–243, § 8.)

AMENDMENTS

1963—Section 8 of act Dec. 30, 1963, amended the first sentence by striking out at the end thereof the words, "and acknowledged by him in the manner provided by law for deeds of real estate."

1963—Section 3 of act Aug. 5, 1963, amended the second sentence by striking the words "each of the cards", and inserting in lieu thereof the words "the card" and the third sentence by striking therefrom "each of the cards" and inserting in lieu thereof "the said card".

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40–701.

§ 40–711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in section 40–710, shall enter on the face of the certificate and on the card described in section 40–706, and on the instrument, if any, filed in the recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than three years, the Recorder of Deeds may destroy the instrument which created such lien and the index card upon which the lien information was entered: *Provided,* That no other unsatisfied

lien is shown on any such index card. (July 2, 1940, 54 Stat. 739, ch. 527, § 11; June 5, 1952, 66 Stat. 126, ch. 370, § 4; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88–89, § 4.)

AMENDMENTS

1963—Section 4 of act Aug. 5, 1963, amended the first sentence by striking "each of the cards" and inserting in lieu thereof "the card" and the last sentence by striking "cards" and inserting in lieu thereof "card".

1952—Act June 5, 1952, added the last sentence providing for destruction by the Recorder of Deeds of instrument creating lien and the index cards with the lien information on release of lien.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 5, 1952, effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42–102.

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40–701.

§ 40–713. Recording liens, place and method.

The recorder shall maintain, in the space assigned to him in the office of the director, a file wherein he shall file a set of cards hereinbefore described under the trade name and engine, serial or identification number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13; June 4, 1952, 66 Stat. 100, ch. 365, § 3; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88–89, § 5.)

AMENDMENTS

1963—Section 5 of act Aug. 5, 1963, amended the section by striking "files wherein he shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other", and inserting in lieu thereof "a file wherein he shall file a set of cards hereinbefore described".

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40–701.

DESTRUCTION OF ALPHABETICAL FILES

Section 6 of act Aug. 5, 1963, provides as follows: "Alphabetical files established and maintained in accordance with the requirements of section 13 of such Act approved July 2, 1940 [§ 40–713], may, with the approval of the Commissioners of the District of Columbia, be destroyed."

Chapter 8.—REGULATION OF PARKING

Sec.

40–809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.

§ 40–801. Short title.

This chapter may be cited as the "District of Columbia Motor Vehicle Parking Facility Act of 1942." (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, redesignated as section 11, by act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 603.)

AMENDMENT

1962—Section 603, act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, renumbered section 10 of act February 1942, 56 Stat. 93, ch. 76, as section 11.

§ 40–808. Disposition of fees and moneys collected.

All fees and other moneys collected under this chapter, including all fees collected pursuant to section 40–616 and section 40–604a, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in a special account within the highway fund established in section 47–1901. Moneys deposited in such special account shall be available, first to defray the expenses of enforcing laws, rules, and regulations relating to the parking of vehicles in the District of Columbia; second, to defray the expenses of operating parking facilities under this chapter; third, for the acquisition, creation, and operation of parking facilities exempt from section 40–809a; and fourth, for the maintenance of highways within the District of Columbia, including the removal of snow and ice therefrom, and the purchase or rental of necessary equipment. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 601.)

AMENDMENT

1962—Act Mar. 2, 1962, amended section to read as above set out. For provisions of section before this amendment, see main volume of Code.

TRANSFER OF MONEYS TO HIGHWAY FUND

Section 604, act Mar. 2, 1962, 76 Stat. 19, Pub. L. 87–408, provided as follows: "All fees and other moneys which have been deposited in the special account of the Treasury of the United States before the date of enactment of this title [amending sections 40–801, 40–808, 40–809 and adding section 40–809a] to the credit of the District of Columbia in accordance with section 40–808 are hereby transferred to the special account established in the highway fund by the amendment made to section 40–808 by section 601 of this title, and such funds shall be available for the purposes provided in such amendment to such section 40–808."

§ 40–809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.

The Commissioners shall include in their annual budget such amounts as may be required from the highway fund established in section 47–1901, for the purpose of carrying out the provisions of this chapter.

* * * * *

(Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 602.)

AMENDMENTS

1962—Act Mar. 2, 1962, amended first sentence of section to read as above set out.

§ 40–809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.

Notwithstanding any provision of this chapter, no real property shall be acquired under the authority of this chapter for use as a parking facility on or after the date of enactment of this section, and the Commissioners and the agency are authorized to operate and maintain only those parking facilities which have been established prior to the date of enactment of this section. No such existing parking facility shall be expanded or otherwise altered except to the extent as may be necessary to permit its continued operation in the same manner as it was being operated immediately before the date of enactment of this section. This section shall not apply to (1) any parking facility which is limited to use by officers and employees of the Governments of the United States or of the District of Columbia by reason of their employment by any such Government, (2) any fringe parking facility, and (3) any parking

facility located on property of the District of Columbia beneath any elevated portion of a public highway. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, as added Mar. 2, 1962, 76 Stat. 19, Pub. L. 87–408, § 603.)

§ 40–810. Parking restrictions—Vehicles impounded—Penalties.

NOTES TO DECISIONS

1. Liability for impounding and ticketing vehicles

Complaint alleging that, though plaintiff had obtained from his landlord equal and coextensive parking privileges in allegedly private alley adjoining business premises involved with a defendant, such defendant had engaged in wrongful or illegal action against plaintiff's parking, resulting in ticketing and impounding of his automobile, was sufficient as against such defendant. *J. C. Gager* v. *"Bob Seidel" etc.* (1962, 300 F. 2d 727, 112 U.S. App. D.C. 135).

Record as a whole disclosed that plaintiff suing police officers and others for damages resulting from alleged conspiracy with respect to ticketing and impounding his automobile which he repeatedly parked in what he alleged was a private alley failed to state cause against police officers. *Id.*

Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES

§ 40–901. Definitions.

* * * * *

(9) "Retail installment contract" means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title to or a lien on, or security or a security interest in, the motor vehicle, which is the subject matter of the transaction, is retained or taken to secure, in whole or in part, the retail buyer's obligations. The term includes a security agreement, chattel mortgage, conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the bailment or lease.

* * * * *

(11) "Security interest" and "secured party" have the same meanings as those given to the terms in sections 28:1–201 and 28:9–105(i) of the District of Columbia Code. (As amended Dec. 30, 1963, 77 Stat. 771, Pub. L. 88–243, § 9.)

AMENDMENT

1963—Section 9(a) of act Dec. 30, 1963, amended paragraph (9) to read as above set out. Section 9(b) of the same act amended the section by adding paragraph (11) thereto.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

CROSS REFERENCE

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see § 28:9–203.

§ 40–902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

NOTES TO DECISIONS

1. Insurance regulations

Statute authorizing District Commissioners to make regulations specifying types and maximum amount of insurance which may be required of automobile buyer to protect seller from loss on installment contract, authorized Commissioners to specify what charges may be included in installment contracts. *Franklin Investment Co., Inc.* v. *W. N. Tobriner etc.* (1961, 296 F. 2d 451, 111 U.S. App. D.C. 329)

TITLE 41. PARTNERSHIPS

Chap. Sec.
3. Uniform Partnerships 41–301
4. Uniform Limited Partnerships 41–401

Chapter 1.—LIMITED PARTNERSHIPS

§§ 41–101 to 41–109. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 31.

Section 41–101 of act Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1498, dealt with number of partners and purposes for which limited partnerships could be formed.

Section 41–102, same act, section 1499, dealt with composition of and contributions to the partnership.

Section 41–103, same act, § 1500, specified the maximum number of special partners.

Section 41–104, same act, § 1501, dealt with liability of special partners.

Section 41–105, same act, § 1502, dealt with execution and composition of certificate.

Section 41–106, same act, § 1503, dealt with acknowledgment and recording of certificate.

Section 41–107, same act, § 1504, dealt with filing of affidavit as to contributions by special partners.

Section 41–108, same act, § 1505, provided that no partnership was formed until certificate and affidavit was filed.

Section 41–109, same act, § 1506, dealt with liability for false statements in certificate and affidavit.

§ 41–110. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section 41–110 of act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507, required publication of the terms of partnership in two newspapers.

§ 41–111. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 31.

Section 41–111, same act § 1508, and act June 16, 1953, 67 Stat. 62, ch. 117, § 1, dealt with the effect of failure to acknowledge and record certificate.

§ 41–112. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section 41–112 of act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508, related to affidavit as to publication by creditors or publishers of newspaper.

§ 41–113 to 41–131. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 31.

Section 41–113 of act Mar. 3, 1901, 31 Stat. 146, ch. 854, § 1510, dealt with renewal of partnerships.

Section 41–114, same act, § 1511, dealt with effect of failure to properly renew partnership.

Section 41–115, same act, § 1512, dealt with acts constituting a dissolution.

Section 41–116, same act, § 1513, provided for the effect of acts performed after dissolution.

Section 41–117, same act, § 1514, dealt with names to be used by partnership.

Section 41–118, same act, § 1515, dealt with necessary defendants in suit against partnership.

Section 41–119, same act, § 1516, dealt with effect of use of special partner's name in firm name.

Section 41–120, same act, § 1517, provided that general partners should transact the business of the partnership.

Section 41–121, same act, § 1518, dealt with the subject of withdrawal of capital contributions.

Section 41–122, same act, § 1519, dealt with reduction of capital.

Section 41–123, same act, § 1520, dealt with the subject of preferential assignments of partnership property.

Section 41–124, same act, § 1521, dealt with liability of special partner for violation of sections 41–122 and 41–123.

Section 41–125, same act, § 1522, provided that creditors should have preference over special partner.

Section 41–126, same act, § 1523, dealt with suits by and against the partnership.

Section 41–127, same act, § 1524, dealt with effect of joinder of special partners in suits against the partnership.

Section 41–128, same act, § 1525, dealt with new suits against special partners after recovery of judgment against general partner.

Section 41–129, same act, § 1526, provided that judgment in suits mentioned in sections 41–127 and 41–128 constituted prima facie evidence of amount due by partnerships.

Section 41–130, same act, § 1527, dealt with voluntary dissolutions.

Section 41–131, same act, § 1528, dealt with liability of general partners.

Cross Reference

See chapter 4, this title, for Uniform Limited Partnerships Law.

Savings Provisions

Sections 41–101 to 41–109, 41–111, and 41–113 to 41–131 were repealed by act of Sept. 28, 1962, except that they were continued in force as to existing limited partnerships. See section 41–429.

Chapter 3. UNIFORM PARTNERSHIPS

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PART I

PRELIMINARY PROVISIONS

§ 41–301. Definition of terms.

In this chapter, "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any law of the District of Columbia.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87–709, § 2.)

EFFECTIVE DATE

Enacting clause preceding section 1 of act Sept. 27, 1962, Pub. L. 87–709, 76 Stat. 636, provides: "That this Act [set out as Title 41, chap. 3, herein] to provide for the formation of partnerships in the District of Columbia and to make uniform the law with respect thereto shall be in effect in the District of Columbia on and after the date of the enactment of this Act" [Sept. 27, 1962].

POPULAR NAME

Section 1 of act Sept. 27, 1962, provides that: "This Act may be cited as the 'Uniform Partnership Act'."

§ 41–302. Interpretation of knowledge and notice.

(1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice—

(a) states the fact to such person, or

(b) delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

(Sept. 28, 1962, 76 Stat. 636, Pub. L. 87–709, § 3.)

§ 41–303. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those jurisdictions which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this chapter takes effect. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87–709, § 4.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–304. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87–709, § 5.)

PART II

NATURE OF A PARTNERSHIP

§ 41–305. Partnership defined.

(1) A partnership is an association of two or more persons to carry on as coowners a business for profit.

(2) But any association formed under any other statute of this jurisdiction, or any statute adopted by authority, other than the authority of this jurisdiction is not a partnership under this chapter, unless such association would have been a partnership in this jurisdiction prior to the adoption of this chapter; but this chapter shall apply to limited partnerships except insofar as the statutes of the District of Columbia relating to such partnerships are inconsistent herewith. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 6.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–306. Rules for determining the existence of a partnership.

In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 41–316 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right

or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment—

(a) as a debt by installments or otherwise,

(b) as wages of an employee or rent to a landlord,

(c) as an annuity to a widow or representative of a deceased partner,

(d) as interest on a loan, though the amount of payment varies with the profits of the business,

(e) as the consideration for the sale of the goodwill of a business or other property by installments or otherwise.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 7.)

Effective Date

See note to section 41–301.

§ 41–307. Partnership property.

(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 8.)

Effective Date

See note to section 41–301.

Part III

Relations of Partners to Persons Dealing With Partnership

§ 41–308. Partner agent of partnership as to partnership business.

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partners so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to—

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) dispose of the goodwill of the business,

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) confess a judgment.

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 9.)

Effective Date

See note to section 40–301.

§ 41–309. Conveyance of real property of the partnership.

(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partners' act binds the partnership under the provisions of paragraph (1) of section 41–308, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 41–308.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of section 41–308, unless the purchaser or his assignee is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 41–308.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 10.)

Effective Date

See note to section 41–301.

§ 41–310. Partnership bound by admission of partner.

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 11.)

§ 41–311. Partnership charged with knowledge of or notice to partner.

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquiring while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 12.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–312. Partnership bound by partner's wrongful act.

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 13.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–313. Partnership bound by partner's breach of trust.

The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 14.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–314. Nature of partner's liability.

All partners are liable—

(a) jointly and severally for everything chargeable to the partnership under sections 41–312 and 41–313,

(b) jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 14.)

§ 41–315. Partner by estoppel.

(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 16.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–316. Liability of incoming partner.

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 17.)

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

§ 41–317. Rules determining rights and duties of partners.

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 18.)

Effective Date

See note to section 41–301.

§ 41–318. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 19.)

§ 41–319. Duty of partners to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 20.)

Effective Date

See note to section 41–301.

§ 41–320. Partner accountable as a fiduciary.

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 21.)

Effective Date

See note to section 41–301.

§ 41–321. Right to an account.

Any partner shall have the right to a formal account as to partnership affairs—

(a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 41–320.

(d) Whenever other circumstances render it just and reasonable. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 22.)

Part V
Property Rights of a Partner

§ 41–322. Continuation of partnership beyond fixed term.

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 23.)

Effective Date

See note to section 41–301.

§ 41–323. Extent of property rights of a partner.

The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 24.)

§ 41–324. Nature of a partner's right in specific partnership property.

(1) A partner is coowner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 25.)

Effective Date

See note to section 41–301.

§ 41–325. Nature of partner's interest in the partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is

personal property. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 26.)

§ 41–326. Assignment of partner's interest.

(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 27.)

Effective Date

See note to section 41–301.

§ 41–327. Partner's interest subject to charging order.

(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 28.)

Effective Date

See note to section 41–301.

Part VI
Dissolution and Winding Up

§ 41–328. Dissolution defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 29.)

§ 41–329. Partnership not terminated by dissolution.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 30.)

Effective Date

See note to section 41–301.

§ 41–330. Causes of dissolution.

Dissolution is caused: (1) Without violation of the agreement between the partners—

(a) by the termination of the definite term or particular undertaking specified in the agreement,

(b) by the express will of any partner when no definite term or particular undertaking is specified,

(c) by the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 41–331. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 31.)

Effective Date

See note to section 41–301.

§ 41–331. Dissolution by decree of court.

(1) On application by or for a partner the court shall decree a dissolution whenever—

(a) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) a partner becomes in any other way incapable of performing his part of the partnership contract,

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) the business of the partnership can only be carried on at a loss,

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 41–326 and 41–327—

(a) after the termination of the specified term or particular undertaking,

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 32.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–332. General effect of dissolution on authority of partner.

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership—

(1) with respect to the partners—

(a) when the dissolution is not by the act, bankruptcy or death of a partner; or

(b) when the dissolution is by such act, bankruptcy or death of a partner, in cases where section 41–333 so requires;

(2) with respect to persons not partners, as declared in section 41–334. (Sept. 27, 1962, 76 Stat. 643, Pub. L. 87–709, § 33.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–333. Right of partner to contribution from copartners after dissolution.

Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless—

(a) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

(Sept. 27, 1962, 76 Stat. 643, Pub. L. 87–709, § 34.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–334. Power of partner to bind partnership to third persons after dissolution.

(1) After dissolution a partner can bind the partnership except as provided in paragraph (3)—

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction,

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1)(b) shall be satisfied out of partnership assets alone when such partner has been prior to dissolution—

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution—

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who,

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority had not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1)(b)(II).

(4) Nothing in this section shall affect the liability under section 41–315 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. (Sept. 27, 1962, 76 Stat. 643, Pub. L. 87–709, § 35.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–335. Effect of dissolution on partner's existing liability.

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. (Sept. 27, 1962, 76 Stat. 644, Pub. L. 87–709, § 36.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–336. Right to wind up.

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: *Provided, however,* That any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. (Sept. 27, 1962, 76 Stat. 644, Pub. L. 87–709, § 37.)

§ 41–337. Rights of partners to application of partnership property.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartner and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 41–335(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have—

(I) all the rights specified in paragraph (1) of this section, and

(II) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2)(a)(II) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have—

(I) if the business is not continued under the provisions of paragraph (2)(b) all the rights of a partner under paragraph (1), subject to clause (2)(a)(II) of this section,

(II) if the business is continued under paragraph (2)(b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered.

(Sept. 27, 1962, 76 Stat. 644, Pub. L. 87–709, § 38.)

Effective Date

See note to section 41–301.

§ 41–338. Rights where partnership is dissolved for fraud or misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (Sept. 27, 1962, 76 Stat. 645, Pub. L. 87–709, § 39.)

Effective Date

See note to section 41–301.

§ 41–339. Rules for distribution.

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are—

(I) the partnership property,

(II) the contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) Those owing to partners other than for capital and profits,

(III) Those owing to partners in respect of capital,

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by section 41–317(a), the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(I) Those owing to separate creditors.

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution.

(Sept. 27, 1962, 76 Stat. 646, Pub. L. 87–709, § 40.)

Effective Date

See note to section 41–301.

§ 41–340. Liability of persons continuing the business in certain cases.

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 41–337(2)(b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in the section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. (Sept. 27, 1962, 76 Stat. 646, Pub. L. 87–709, § 41.)

Effective Date

See note to section 41–301.

§ 41–341. Rights of retiring or estate of deceased partner when the business is continued.

When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41–340 (1), (2), (3), (5), (6), or section 41–337(2)(b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative, as against such persons or partnership, may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors, or the representative of the retired or deceased creditors of the dissolved partnership as against the separate partner, shall have priority on any claim arising under this section, as provided by section 41–340(8). (Sept. 27, 1962, 76 Stat. 647, Pub. L. 87–709, § 42.)

Effective Date

See note to section 41–301.

§ 41–342. Accrual of right to account.

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (Sept. 27, 1962, 76 Stat. 648, Pub. L. 87–709, § 43.)

EFFECTIVE DATE

See note to section 41–301.

Chapter 4.—UNIFORM LIMITED PARTNERSHIPS

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§ 41–401. Limited partnership defined.

A limited partnership is a partnership formed by two or more persons under the provisions of section 41–402, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. (Sept. 28, 1962, 76 Stat. 655, Pub. L. 87–716, § 1.)

EFFECTIVE DATE

Enacting clause preceding section 1 act Sept. 28, 1962, provides as follows: "That this act [this chapter] to provide for the formation of limited partnerships in the District of Columbia and to make uniform the law with respect thereto, shall be in effect in the District of Columbia on and after the date of the enactment of this Act." [Sept. 28, 1962.]

POPULAR NAME

Section 27 of act Sept. 28, 1962, provides as follows: "This Act [this chapter] may be cited as the "Uniform Limited Partnership Act."

§ 41–402. Formation.

(1) Two or more persons desiring to form a limited partnership shall—

(a) sign and swear to a certificate, which shall state—

I. the name of the partnership,

II. the character of the business,

III. the location of the principal place of business,

IV. the name and place of residence of each member; general and limited partners being respectively designated,

V. the term for which the partnership is to exist,

VI. the amount of cash and a description of and the agreed value of the other property contributed by each limited partner,

VII. the additional contribution, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,

VIII. the time, if agreed upon, when the contribution of each limited partner is to be returned,

IX. the share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,

X. the right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

XI. the right, if given, of the partners to admit additional limited partners,

XII. the right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,

XIII. the right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner, and

XIV. the right, if given, of a limited partner to demand and receive property other than cash in return for his contribution;

(b) file for record the certificate in the Office of the Recorder of Deeds of the District of Columbia.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1). (Sept. 28, 1962, 76 Stat. 655, Pub. I. 87–716, § 2.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–403. Business which may be carried on.

A limited partnership may carry on any business which a partnership without limited partners may carry on. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 3.)

§ 41–404. Character of limited partner's contribution.

The contributions of a limited partner may be cash or other property, but not services. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 4.)

§ 41–405. A name not to contain surname of limited partner—Exceptions.

(1) The surname of a limited partner shall not appear in the partnership name, unless—

(a) It is also the surname of a general partner, or

(b) prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 5.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–406. Liability for false statements in certificate.

If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false—

(a) at the time he signed the certificate, or

(b) subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in section 41–425(3).

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 6.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–407. Limited partner not liable to creditors.

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 7.)

§ 41–408. Admission of additional limited partners.

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 41–425. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 8.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–409. Rights, powers, and liabilities of a general partner.

(1) A general partner shall have all the rights and powers and be subect to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to—

(a) do any act in contravention of the certificate,

(b) do any act which would make it impossible to carry on the ordinary business of the partnership,

(c) confess a judgment against the partnership,

(d) possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,

(e) admit a person as a general partner,

(f) admit a person as a limited partner, unless the right so to do is given in the certificate,

(g) continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 9.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–410. Rights of a limited partner.

(1) A limited partner shall have the same rights as a general partner to—

(a) have the partnership books kept at a principal place of business of the partnership, and at all times to inspect and copy any of them,

(b) have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 41–415 and 41–416. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 10.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–411. Status of a person erroneously believing himself a limited partner.

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of this exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership: *Provided,* That on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 11.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–412. One person both general and limited partner.

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited, partner shall have all the rights and powers and be subject to all the restrictions of a general partner, except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 12.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–413. Loans and other business transactions with limited partner.

(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim—

(a) receive or hold as collateral security any partnership property, or

(b) receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (1) is a fraud on the creditors of the partnership. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 13.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–414. Relation of limited partners inter se.

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 14.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–415. Compensation of limited partner.

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate: *Provided,* That after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 15.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–416. Withdrawal or reduction of limited partner's contribution.

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until—

(a) all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) the certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution—

(a) on the dissolution of a partnership, or

(b) when the date specified in the certificate for its return has arrived, or

(c) after he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when—

(a) he rightfully but unsuccessfully demands the return of his contribution, or

(b) the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1a) and the limited partner would otherwise be entitled to the return of his contribution.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 16.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–417. Liability of limited partner to partnership.

(1) A limited partner is liable to the partnership—

(a) for the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership.

(a) specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 17.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–418. Nature of limited partner's interest in partnership.

A limited partner's interest in the partnership is personal property. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87–716, § 18.)

§ 41–419. Assignment of limited partner's interest.

(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 41–425.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 41–406 and 41–417. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87–716, § 19.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–420. Effect of retirement, death, or insanity of a general partner.

The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners—

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87–716, § 20.)

§ 41–421. Death of limited partner.

(1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 21.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–422. Rights of creditors of limited partner.

(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 22.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–423. Distribution of assets.

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(c) Those to limited partners in respect to the capital of their contributions.

(d) Those to general partners other than for capital and profits.

(e) Those to general partners in respect to profits.

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 23.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–424. When certificate shall be canceled or amended.

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when—

(a) there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) a person is substituted as a limited partner,

(c) an additional limited partner is admitted,

(d) a person is admitted as a general partner,

(e) a general partner retires, dies, or becomes insane, and the business is continued under section 41–420,

(f) there is a change in the character of the business of the partnership,

(g) there is a false or erroneous statement in the certificate,

(h) there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) a time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) the members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 24.)

Effective Date

See note to section 41–401.

§ 41–425. Requirements for amendment and for cancellation of certificate.

(1) The writing to amend a certificate shall—

(a) conform to the requirements of section 41–402(1)(a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the United States District Court for the District of Columbia to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the Recorder of Deeds of the District of Columbia where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed for record in the office of the Recorder of Deeds of the District of Columbia where the certificate is recorded—

(a) a writing in accordance with the provisions of paragraph (1) or (2), or

(b) a certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in acordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter. (Sept. 28, 1962, 76 Stat. 661, Pub. L. 87–716, § 25.)

Effective Date

See note to section 41–401.

§ 41–426. Parties to action.

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. (Sept. 28, 1962, 76 Stat. 661, Pub. L. 87–716, § 26.)

Effective Date

See note to section 41–401.

§ 41–427. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it.

(3) This chapter shall not be so construed as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action on proceedings begun or right accrued before this chapter takes effect. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 28.)

Effective Date

See note to section 41–401.

§ 41–428. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 29.)

Effective Date

See note to section 41–401.

§ 41–429. Provisions for existing limited partnerships.

(1) A limited partnership formed under Title 41, chapter 1, prior to the adoption of this chapter, may become a limited partnership under this chapter by complying with the provisions of section 41–402: *Provided,* That the certificate sets forth—

(a) the amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) that the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under Title 41, chapter 1, prior to the adoption of this chapter, until or unless it becomes a limited partnership under this chapter, shall continue to be governed by the provisions of sections 41–101 to 41–109, 41–111 and 41–113 to 41–131, except that such partnership shall not be renewed unless so provided in the original agreement. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 30.)

Effective Date

See note to section 41–401.

TITLE 42.—PERSONAL PROPERTY

Chapter 1.—RECORDATION OF INSTRUMENTS

§ 42–101. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(11), effective Jan. 1, 1965.

Section 546–A of act Mar. 3, 1901, 31 Stat. 1275, ch. 854, as amended, dealt with recording of bills of sale, chattel mortgages and deeds of trust. See new provisions contained in Uniform Commercial Code, set out as subtitle I in title 28.

§ 42–102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder—Legal effect.

It is not necessary for the Recorder of Deeds to spread upon the records of his office the financing statements or other papers filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, but they shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of his office. (As amended Dec. 30, 1963, 77 Stat. 772, Pub. L. 88–243, § 10.)

AMENDMENT

1963—Section 10 of act Dec. 30, 1963, amended the section to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

§ 42–103. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(11), effective Jan. 1, 1965.

Section 546B of act Mar. 3, 1901, 31 Stat. 1275, ch. 854, as amended, dealt with conditional sales, its validity and recordation. See new provisions in Uniform Commercial Code, set out as subtitle I in title 28.

§ 42–104. Void instruments—Disposal.

(a) Unless the Recorder of Deeds has notice of an action pending relative thereto, he may remove from the files and destroy:

(1) an instrument filed in his office pursuant to sections 42–101 and 42–103, or pursuant to sections 40–701 to 40–712, 40–713 to 40–715, which has become void or lapsed, and which has been void or lapsed for one year or more, together with any affidavit, release, assignment, or continuation or termination statement relating thereto;

(2) a lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, and any index of any of them, one year or more after lapse of the financing statement and every continuation statement related thereto; and

(3) a termination statement filed pursuant to section 28:9–404 of the District of Columbia Code, and the index on which it is noted, one year or more after the filing of the termination statement.

(b) Subsection (a) of this section does not apply to a bill of sale, mortgage, deed of trust, conditional sale of, financing statement or security agreement covering, railroad rolling stock. (As amended Dec. 30, 1963, 77 Stat. 772, Pub. L. 88–243, § 11.)

AMENDMENT

1963—Section 11 of act Dec. 30, 1963, amended the section to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

§ 42–105. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(12), effective Jan. 1, 1965.

Section 546E of act Mar. 3, 1901, ch. 854, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3, dealt with releases required to be executed by secured creditors upon payment of debt, and the recordation thereof. See new provisions in Uniform Commercial Code, set out as subtitle I in title 28.

§ 42–106. Destruction of released instruments.

When a financing statement filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code has not lapsed, but all the collateral described in the financing statement has been released in the manner provided by Part 4 thereof, the Recorder of Deeds may, after the expiration of three years from the date of the filing of the statement releasing all the collateral, destroy the financing statement and each continuation statement, statement of assignment, and statement of release relating thereto. (As amended Dec. 30, 1963, 77 Stat 773, Pub. L. 88–243, § 12.)

AMENDMENT

1963—Section 12 of act Dec. 30, 1963, amended the section to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

§ 42–107. False statements—Penalty.

(a) Whoever intentionally makes a false statement with respect to a financing statement or other paper filed with the Recorder of Deeds pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, or, after receipt of payment in full of the debt secured thereby, neglects or refuses, after written demand by the debtor, to send to the debtor a termination statement as provided by section 28:9–404 of the Code, shall be fined not more than $500 or imprisoned not more than one year, or both.

(b) Prosecutions for violations of this subchapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(c) As used in subsection (b) of this section "Corporation Counsel" means the attorney for the District of Columbia, by whatever title the attorney may be designated by the Board of Commissioners of the District of Columbia. (As amended Dec. 30, 1963, 77 Stat. 773, Pub. L. 88–243, § 13.)

AMENDMENT

1963—Section 13 of act Dec. 30, 1963, amended the section to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

TITLE 43.—PUBLIC UTILITIES

Chapter 2.—CREATION OF PUBLIC UTILITIES COMMISSION — MEMBERS — COUNSEL — EMPLOYEES

§ 43-201. Members—Eligibility of Commissioners—Oath.

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88-503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2-2418.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-310. Commission to prescribe forms of books and records.

NOTES TO DECISIONS

Accounting procedures, regulation of 1
Arbitrary or capricious 2

1. Accounting procedures, regulations of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

2. Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

§ 43-314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

NOTES TO DECISIONS

Accounting procedures, regulation of 1
Arbitrary or capricious 2

1. Accounting procedures, regulation of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

2. Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

§ 43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

NOTES TO DECISIONS

10. Tariff provisions, hearings on

Statute requiring Public Utilities Commission to permit increase in rates by a utility only upon application and after notice, hearing, and investigation did not make invalid the tariff provision, which was accepted by commission without notice, hearing, and investigation, and which limited liability of telephone company for omissions in telephone directory listings. *J. F. Bird* v. *The Chesapeake and Potomac Telephone Co.* (D.C. Mun. App. 1962, 185 A. 2d 917).

Chapter 7.—ORDERS AND COURT PROCEEDINGS

§ 43-705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

NOTES TO DECISIONS

Persons affected 1
Several orders 2

1. Persons affected

District Court should have found that one who filed petition to intervene in proceedings before Public Utilities Commission of District of Columbia with respect to bus and streetcar fares was transit rider and entitled to appeal to District Court from Commission's order, where he made sworn statement in proceedings before Commission that he was regular commuter on carrier's vehicles. *L. N. Bebchick & L. S. Goodman* v. *Public Utilities Commission etc.* (1961, 287 F. 2d 337, 109 U.S. App. D.C. 298).

Transit riders on buses and streetcars of carrier were entitled to appeal to District Court from order of Public Utilities Commission of District of Columbia raising cash fare for single trip from 20 cents to 25 cents, though order did not increase token fare of five for $1 or 20 cents each. *Id.*

District Court should have found that person, who filed petition in proceedings in Public Utilities Commission of District of Columbia concerning bus and streetcar fares for reconsideration of order fixing fares, and who alleged therein that he was a transit rider, and who filed affidavit stating that he was occasional and casual customer and rider of buses and streetcars of carrier, was transit rider and entitled to appeal to District Court from Commission's order. *Id.*

2. Several orders

An order of Public Utilities Commission granting an increase in cash fare to be charged by transit company was not moot due to suppression of that order by subsequent order which continued in effect increased cash fare since validity of first order during time it was in effect remained in controversy, in that disposition of any excess funds which might have accumulated prior to subsequent order, by reason of invalidity of the increase, remained for decision. *L. N. Bebchick et al.* v. *Public Utilities Commission et al.* (1963, 318 F. 2d 187, 115 U.S. App. D.C. 216).

§ 43-706. Appeal limited to questions of law.

NOTES TO DECISIONS

9. Review, limitations of

Function of the Court of Appeals in reviewing the Public Utilities Commission's orders and decisions is limited to questions of law including constitutional questions and the Commission's findings of fact are conclusive unless it appears that the findings are unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc.* v. *Public Utilities Commission etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

§ 43–1520c. Commissioners to have authority to fix water rates.

(a) The Commissioners are authorized, in their discretion, to fix from time to time, the rates charged by the District for water and water services furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33⅓ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of section 43–1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioners are authorized, in their discretion, to increase the rates charged by the District for water and water services furnished by the District water supply system: *Provided,* That no such increase shall exceed 25 per centum of the rate in effect on January 1, 1961. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 501.)

AMENDMENT

1962—Section 501, act Mar. 2, 1962, amended section by inserting (a) at the beginning of the section and adding subsection (b) thereto.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 504, act Mar. 2, 1962, provided that amendments made to this section and sections 43–1606 and 43–1607 "shall become effective on the first day of the third month which begins after the date of enactment of this Act."

§ 43–1521c. Lien for water charges.

NOTES TO DECISIONS

Police power 1
Retroactive lien 2

1. Police power

Act of Congress governing District of Columbia water system and providing that District with continuing lien for water charges upon any land and improvements thereon to which water or water service has been furnished represent valid exercise of police power. *R. Friedman* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

2. Retroactive lien

Statute giving District of Columbia continuing lien for water charges upon any land and improvements thereon to which water or water service has been furnished did not operate to create retroactive lien for water furnished prior to its effective date or to compel owner to pay obligation of earlier owner for water charges before its effective date. *R. Friedman* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

Chapter 16.—SANITARY SEWAGE WORKS

§ 43–1606. Methods of determination of sanitary sewer service charges.

AMENDMENT

1962—Section 502, act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, amended section by striking "60 per centum" wherever same appeared in this section and substituted in lieu thereof "75 per centum".

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 43–1520c.

§ 43–1607. Persons obligated to pay sanitary sewer service charges.

* * * * *

(c) If at any time, or from time to time, the Commissioners shall change the established sanitary sewer service charge, the sanitary sewer service charge for any period beginning prior to any such change and ending thereafter shall be prorated on a monthly basis, in accordance with the established charges prevailing in the respective periods. (Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 503.)

AMENDMENT

1962—Section 503, act Mar. 2, 1962, added subsection (c).

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 43–1520c.

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.

44–214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

§ 44–214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

Notwithstanding provisions of the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the District of Columbia, and for other purposes", approved January 14, 1933, and the provisions of the unification agreement incorporated therein, and notwithstanding the provisions of the Act entitled "An Act or provide for the transportation of schoolchildren in the District of Columbia at a reduced fare", approved February 25, 1931, the Public Utilities Commission of the District of Columbia shall fix the rate of fare for transportation by street railway and bus of schoolchildren going to and from public, parochial, or like schools in the District of Columbia at not more than one-half the cash fare established from time to time by the Public Utilities Commission for regular route transportation within the District of Columbia, and shall establish rules and regulations governing the use thereof. No fares for schoolchildren shall be available to persons over eighteen years of age.

If, after giving effect to any and all motor vehicle fuel tax and real estate tax exemptions, the net operating income from mass transportation operations in the District of Columbia of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this section for any twelve-month period ending August 31 is less than the rate of return established by the regulatory commission having jurisdiction in such carrier's last rate case, net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on its gross operating revenues in the District of Columbia, exclusive of any school fare subsidy, then the Washington Metropolitan Area Transit Commission shall, as soon as practicable after such August 31, certify to the Commissioners of the District of Columbia or their designated agent with respect to such twelve-month period: (1) an amount which is the difference between the total of all reduced fares paid to each such carrier by schoolchildren in accordance with this section and the amount which would have been paid to each such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation; and (2) an amount which is the amount by which each such carrier's net operating income from mass transportation operations in the District of Columbia is less than such rate of return established by the appropriate regulatory commission in the carrier's last rate case, after giving effect to the aforesaid tax exemptions, exclusive of any such school fare subsidy. Upon such certification, the Board of Commissioners of the District of Columbia shall pay to each such carrier an amount equal to the amount certified pursuant to clause (1) thereof; except that in no event shall such amount exceed the amount certified pursuant to clause (2) hereof. (Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1, June 28, 1962, 76 Stat. 113, Pub. L. 87–507, § 1(2).)

References in Text

Act Jan. 14, 1933, referred to in text, was act Jan. 14, 1933, 47 Stat. 759, ch. 10, and was superseded by this section.

Act Feb. 25, 1931, referred to in text, was act Feb. 25, 1931, 46 Stat. 1419, ch. 302, and was superseded by this section.

Amendment

1962—Act June 28, 1962, amended act Aug. 9, 1955, by adding a new section thereto designated as section 2. This new section is set out as the second paragraph to this section.

Effective Date of 1962 Amendment

Section 2, act June 28, 1962, provided as follows: "The amendment made by the first section of this Act [Act June 28, 1962, set out as par. 2 of this section] shall be applicable with respect to the twelve-month period ending on August 31 next following the date of enactment of this Act [June 28, 1962], and to each twelve-month period thereafter."

TITLE 45.—REAL PROPERTY

Chapter 2.—INTERPRETATION OF INSTRUMENTS

§ 45–201. Words of inheritance unnecessary.

NOTES TO DECISIONS

Construction .49
Words of art .50

.49. Construction

Deeds and wills must be construed in accordance with intention of parties insofar as it can be discerned from text of instrument. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (1963, 223 F. Supp. 61).

.50. Words of art

The requirement that words of art, such as "and his heirs" or "in fee simple," or any similar phrase, be used in order to create estate in fee simple has been abolished in District of Columbia by statute providing in effect that a conveyance or device to A without anything more grants an estate in fee simple unless the intention of the parties appears to be to the contrary. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (1963, 223 F. Supp. 61).

§ 45–203. Remainder to heirs—Rule in Shelley's case abolished.

NOTES TO DECISIONS

Construction .50
Shelley's case 2

.50. Construction

Deeds and wills must be construed in accordance with intention of parties insofar as it can be discerned from text of instrument. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (1963, 223 F. Supp. 61).

2. Shelley's case

The rule in Shelley's case has been abolished in District of Columbia by statute providing in effect that if one grants an estate to A for life, remainder to his heirs, A receives a life estate and his heirs take a fee simple upon his death. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (1963, 223 F. Supp. 61). Testatrix' daughter and granddaughter took life estates and not estates in fee simple under will devising realty to daughter and granddaughter share and share alike, with granddaughter's share going to daughter in event of granddaughter's death without issue and to granddaughter's issue in event of grandaughter's death with issue, and with daughter's share descending to her children per capita. *Id.*

Chapter 7.—RECORDER OF DEEDS

SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

Sec.

45–701. Appointment and duties.

SUBCHAPTER II.—RECORDATION TAX ON DEEDS

45–721. Definitions.
45–722. Exemptions—Enumeration of deeds exempt from tax.
45–723. Imposition of tax—Rate—Returns—Liability for tax.
45–724. Absence of consideration—Basis for computation of tax.
45–725. Investigation by commissioners to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons—Compelling attendance—Punishment for disobedience.
45–726. Recordation—Conditions.
45–727. Presumptions and burden of proof.
45–728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.
45–729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.
45–730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in conection with compromise agreements—Prosecutions.
45–731. Compromise of penalties and adjustment of interest.
45–732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.
45–733. Administration of oaths.
45–734. Appeal—Other remedies.
45–735. Refunds and collection.
45–736. Stamps and other devices for collection of tax.
45–737. Promulgation of rules and regulations.
45–738. Abatement.
45–739. Elimination of fractional stamps or devices.
45–740. General criminal penalty—Prosecutions for nonfelonies by corporation council—Prosecutions for felonies by United States attorney.
45–741. Criminal penalty as to stamps—Illegal acts relating to stamps.
45–742. Disposition of funds.
45–743. Separability clause.
45–744. Appropriations.

SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

§ 45–701. Appointment and duties.

(a) There shall be a Recorder of Deeds of the District, appointed by the Commissioners of the District of Columbia, who shall:

(1) except as provided by clause (2) of this subsection, record all deeds, contracts, and other instruments in writing affecting the title or ownership of real estate or personal property which have been duly acknowledged and certified;

(2) accept for filing, without acknowledgment or certification, all instruments, financing statements and other papers filed in his office pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, and sections 40–701 to 40–712 and 40–713 to 40–715.

(3) perform all requisite services connected with the duties prescribed in clauses (1) and (2) of this subsection; and

(4) have charge and custody of all the records, papers, and property appertaining to his office.

(b) A person may not be appointed Recorder of Deeds unless he has been a resident of the District of Columbia for at least five years next preceding his appointment.

(c) The performance, by the Recorder of Deeds and officers and employees in his office, of their duties and functions shall be subject to the supervision and control of the Commissioners of the District. (As amended Dec. 30, 1963, 77 Stat. 773, Pub. L. 88–243, § 14.)

AMENDMENT

1963—Section 14 of act Dec. 30, 1963, amended section to read as above set out.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

SUBCHAPTER II.—RECORDATION TAX ON DEEDS

§ 45–721. Definitions.

When used in this chapter, unless otherwise required by the context—

(a) The word "District" means the District of Columbia.

(b) The word "Commissioners" means the Commissioners of the District of Columbia, or their duly authorized agents or representatives.

(c) The word "deed" means any document, instrument, or writing (other than a will and other than a lease), regardless of where made, executed, or delivered whereby any real property in the District of Columbia, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.

(d) The words "real property" mean every estate or right, legal or equitable, present or future, vested or contingent in lands, tenements, or hereditaments located in whole or in part within the District.

(e) The word "consideration", except as otherwise provided in section 45–724 of this subchapter, means the price or amount actually paid, or required to be paid, for real property including any mortgages, liens, or encumbrances thereon.

(f) The word "person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, any individual acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(g) The word "deficiency" as used in this subchapter means the amount or amounts by which the tax imposed by this subchapter as determined by the Commissioners exceeds the amount shown as the tax upon the return of the person or persons liable for the payment thereof.

(h) The word "taxpayer" means any person required by this title to pay a tax, or file a return. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87–408, § 301.)

EFFECTIVE DATE

Section 325, act Mar. 2, 1962, provided as follows: "The provisions of this title [classified to sections 45–721 to 45–744] shall take effect on the first day of the first month which begins on or after the sixtieth day after the enactment of this Act."

SHORT TITLE

Section 326, act Mar. 2, 1962, provided as follows: "This title [classified to sections 45–721 to 45–744] may be cited as the 'District of Columbia Real Estate Deed Recordation Tax Act'."

TRANSFER OF FUNCTIONS

Organization Order No. 130.—Office of Recorder of Deeds, Real Estate Deed Recordation Tax

Repealed by Order No. 63–197, Jan. 24, 1963. See Org. Ord. No. 101 in appendix to title 1.

§ 45–722. Exemptions—Enumeration of deeds exempt from tax.

The following deeds shall be exempt from the tax imposed by this chapter:

1. Deeds recorded prior to the effective date of the enactment of this chapter.

2. Deeds to property acquired by the United States of America or the District of Columbia.

3. Deeds to property acquired by an institution, organization, corporation, association, or government (other than the United States of America or the District of Columbia) entitled to exemption from real property taxation under sections 47–801a to 47–801f, which property was acquired solely for a purpose or purposes which would entitle such property to exemption under said sections 47–801a to 47–801f: *Provided,* That a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation.

4. Deeds to property acquired by an institution, organization, corporation, or association entitled to exemption from real property taxation by special Act of Congress, which property was acquired solely for a purpose or purposes for which such special exemption was granted: *Provided,* That a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation.

5. Deeds which secure a debt or other obligation.

6. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.

7. Deeds between husband and wife, or parent and child, without actual consideration therefor.

8. Tax deeds.

9. Deeds of release of property which is security for a debt or other obligation. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87–408, § 302.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–723. Imposition of tax—Rate—Returns—Liability for tax.

(a) There is hereby imposed on each deed at the time it is submitted to the Commissioners for recordation a tax at the rate of one-half of 1 per centum of the consideration for such deed: *Provided,* That in any case where application of the rate of tax to the consideration for a deed results in a total tax of less than $1 the tax shall be $1.

(b) Each such deed shall be accompanied by a return under oath in such form as the Commissioners may prescribe, executed by all the parties to the deed, setting forth the consideration for the deed, the amount of tax payable, and such other information as the Commissioners may require.

(c) The parties to a deed which is submitted to the Commissioners for recordation shall be jointly and severally liable for payment of the taxes imposed by this section: *Provided,* That neither the United States nor the District of Columbia shall be subject to such liability.

(d) The Commissioners are authorized—

(1) to prescribe by regulation for reasonable extensions of time for the filing of the return required by subsection (b) of this section; and

(2) to waive as to any party to a deed the requirement for the filing of a return by such party whenever it shall be determined by the Commissioners that a return cannot be filed: *Provided,* That any waiver granted by the Commissioners to a party shall not, unless specifically authorized, be deemed to be a waiver as to any other party. Any waiver made pursuant to this subsection shall not affect the requirements of subsection (c) of this section.

(Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 303.)

Effective Date

See note to section 45–721.

§ 45–724. Absence of consideration—Basis for commutation of tax.

Where no price or amount is paid or required to be paid for real property or where such price or amount is nominal, the consideration for the deed to such property shall, for purposes of the tax imposed by this subchapter, be construed to be the fair market value of the real property, and the tax shall be based upon such fair market value. In any such case, the return required to be filed with the deed shall contain such information as to the fair market value of the real property as the Commissioners shall require. Whenever, in the opinion of the Commissioners, a return does not contain sufficient information as to the fair market value of such real property, the Commissioners are authorized to make a determination thereof from the best information available. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 304.)

Effective Date

See note to section 45–721.

§ 45–725. Investigation by Commissioners to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons — Compelling attendance — Punishment for disobedience.

The Commissioners, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to the provisions of this subchapter or pursuant to any regulations of the Commissioners promulgated hereunder, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, are authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Commissioners shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided then, and in that event, the Commissioners may report that fact to the United States District Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person is custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Commissioners or any person designated by them of any such books, papers, records, or memorandums, or who shall obstruct or hinder the Commissioners or any person designated by them in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 305.)

Cross Reference

For penalty provisions see sections 45–729, 45–730(c), 45–740, 45–741.

Effective Date

See note to section 45–721.

§ 45–726. Recordation—Conditions.

Except as otherwise provided in the subchapter, no deed shall be recorded by the Commissioners until the return required by this subchapter shall have been filed, and the tax imposed by this subchapter shall have been paid. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 306.)

Effective Date

See note to section 45–721.

§ 45–727. Presumptions and burden of proof.

For the purpose of proper administration of this subchapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds are taxable and the burden shall be upon the taxpayer to show that a deed is exempt from tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 307.)

Effective Date

See note to section 45–721.

§ 45–728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.

(a) If a deficiency in tax is determined by the Commissioners, the person liable for the payment thereof shall be notified by registered or certified mail of said determination which shall include a statement of taxes due and given a period of not less than thirty days after such notice is sent in which to file a protest with the Commissioners and show cause or reason why the deficiency should not be paid. If no protest is filed within such thirty-day period, the deficiency as determined by the Commissioners shall be final. If a protest is filed within said period of thirty days, opportunity for hearing thereon shall be granted by the Commissioners, and a final decision thereon shall be made as quickly as practicable and notice of such decision, together with a statement of taxes finally determined to be due, shall be sent by registered or certified mail to the person liable for the payment of the deficiency.

(b) Any deficiency in tax which has become final in accordance with the provisions of subsection (a) of this section shall, if no protest is filed, be due and payable within ten days after the expiration of the thirty-day period provided in subsection (a) of this section or, if a protest is filed, shall be due and payable within ten days after notice of the final decision of the Commissioners upon such protest is

sent to the person liable for payment of the deficiency. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 308.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

(a) In case of any failure to make and file a correct return as required by this subchapter within the time prescribed by this subchapter or prescribed by the Commissioners in pursuance of this subchapter, 5 per centum of the tax imposed by this subchapter shall be added to such tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file was due to reasonable cause and not due to neglect the Commissioners may in their discretion waive, in whole or in part, the addition to the tax provided by this subsection.

(b) The amount added to any tax under subsection (a) of this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of neglect.

(c) Interest upon the amount finally determined as a deficiency shall be assessed at the same time as the deficiency, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month or portion of a month, from the date prescribed for the payment of the tax to the date the deficiency is assessed.

(d) If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1 per centum per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(e) If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(f) If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid.

(g) Where a deficiency, or any interest or additional amounts assessed in connection therewith under subsection (c), (e), or (f) is not paid in full within the time prescribed by this section, there shall be collected as part of the tax interest upon the unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date when such unpaid amount was due until it is paid.

(h) The Commissioners are authorized at the request of the taxpayer to extend the time for payment by the taxpayer of the amount of the tax imposed by this subchapter, whether determined as a deficiency or otherwise, for a period not to exceed six months from the date prescribed for the payment of such tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 309.)

EFFECTIVE DATE

See note to section 45–721.

§45–730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.

(a) Whenever in the opinion of the Commissioners there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Commissioners may compromise such tax.

(b) The Commissioners are authorized to enter into a written agreement with any person relating to the liability of such person for payment of the tax imposed under this subchapter. Any such agreement which is approved by the Commissioners and the taxpayer involved, or his authorized agent or representative, shall be final and conclusive and—except upon a showing of fraud, malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded.

(c) Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any written agreement under this section or offer to enter into any such agreement, conceals from any officer or employee of the District of Columbia any material fact relating to the tax imposed by this subchapter; destroys, mutilates, or falsifies any books, documents, or record; or makes under oath any false statements relating to the tax imposed by this subchapter shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the municipal court of the District of Columbia, in the name of the District of Columbia, on information by the Corporation Counsel of the District of Columbia or any of his assistants. (Mar. 2, 1962, 76 Stat. 14, Pub. L. 87–408, § 310.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–731. Compromise of penalties and adjustment of interest.

The Commissioners shall have the power for cause shown to compromise any penalty which may be imposed under the provisions of this subchapter. The Commissioners may adjust any interest, where, in their opinion, the facts in the case warrant such action. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 311.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.

(a) Except as otherwise provided in this section, the amount of any tax imposed by this subchapter shall be assessed within three years after the deed is recorded by the Commissioners and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) In the case of a false or fraudulent return, with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In case of a willful attempt in any manner to defeat or evade the tax imposed by this subchapter, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) In the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) Where, before the expiration of the time prescribed in this section for the assessment of the tax imposed by this subchapter, the Commissioners and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(f) The running of the period of limitations provided in this section on the making of assessments, or the collection of the tax imposed by this subchapter in any manner authorized by law, shall be suspended for any period during which the Commissioners are prohibited from making the assessment or from collecting said tax, and for ninety days thereafter: *Provided,* That in any case where a proceeding is commenced by a taxpayer in any court in connection with the tax imposed by this subchapter, the running of the period of limitations shall be suspended for the period of the pendency of such proceeding and for ninety days after the decision of the court shall have become final or, if the proceeding shall have been dismissed or otherwise disposed of, for a period of ninety days after such dismissal or other disposition. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 312.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–733. Administration of oaths.

The Commissioners are authorized to administer oaths and affidavits in relation to any matter or proceeding conducted by them in the exercise of their powers and duties under this subchapter. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 313.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–734. Appeal—Other remedies.

(a) Any person aggrieved by any assessment of a deficiency in tax finally determined by the Commissioners under the provisions of section 45–728 may appeal to the District of Columbia Tax Court in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411, as amended and as the same may hereinafter be amended.

(b) The remedy provided in subsection (a) of this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law but no suit by the taxpayer for the recovery of any part of the tax imposed shall be instituted or maintained in any court if the taxpayer has elected to file an appeal with respect to such tax, or any part thereof, in accordance with the provisions of subsection (a) of this section. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 314.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–735. Refunds and collection.

The provisions of section 47–2413, and the provisions of section 47–312 and section 47–313 shall be applicable to the tax imposed by this title. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 315.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–736. Stamps and other devices for collection of tax.

The Commissioners are authorized to prescribe by regulation such methods or devices, or both, including the use of a stamp or stamps, for the evidencing of payment, and the collection of the taxes imposed by this subchapter, as they may deem necessary and proper for the administration of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 316.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–737. Promulgation of rules and regulations.

The Commissioners are hereby authorized to prescribe such rules and regulations as they may deem necessary to carry out the purposes of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 317.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–738. Abatement.

The Commissioners are authorized to abate the unpaid portion of any tax due under the provisions of this subchapter, or any liability in respect thereof, if the Commissioners determine under rule or regulation prescribed by them that the administration and collection costs involved would not warrant collection of the amount due. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 318.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–739. Elimination of fractional stamps or devices.

For the purpose of avoiding, in the case of any stamps or devices employed pursuant to authority of this subchapter, the issuance of stamps or the

employment of devices representing fractional parts of $1, the Commissioners are authorized, in their discretion, to limit the denominations of such stamps or devices to amounts representing $1 or multiples of $1, and to prescribe further that where part of the tax due is a fraction of $1, the tax paid shall be paid to the nearest dollar. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 319.)

Effective Date

See note to section 45–721.

§ 45–740. General criminal penalty—Prosecutions for nonfelonies by corporation counsel—Prosecutions for felonies by United States attorney.

Whoever violates any provision of this subchapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this subchapter, shall be subject to a fine of not more than $1,000, or to imprisonment of not more than one year, or to both such fine and imprisonment. Prosecutions for violations of this subchapter shall be on information filed in the municipal court for the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States attorney in and for the District of Columbia, or any of his assistants. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 320.)

Effective Date

See note to section 45–721.

§ 45–741. Criminal penalty as to stamps—Illegal acts relating to stamps.

(1) Any person who, with intent to defraud, alters, forges, makes, or counterfeits any stamp, or other device prescribed under authority of this subchapter for the collection or payment of any tax imposed by this subchapter, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, or other device; or

(2) Fraudulently cuts, tears, or removes from any deed, parchment, paper, instrument, writing, or article, upon which any tax is imposed by this subchapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this subchapter; or

(3) Fraudulently uses, joins, fixes, or places to, with, or upon any deed, parchment, paper, instrument, writing, or article, upon which a tax is imposed by this subchapter,

(a) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other deed, parchment, paper, instrument, writing, or article upon which any tax is imposed by this subchapter; or

(b) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(c) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) (a) Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(b) knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(c) knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any deed, parchment, paper, instrument, writing, package, or article,

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than three years, or both. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 321.)

Effective Date

See note to section 45–721.

§ 45–742. Disposition of funds.

All moneys collected under this subchapter shall be deposited in the Treasury of the United States to the credit of the general fund of the District of Columbia. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 322.)

Effective Date

See note to section 45–721.

§ 45–743. Separability clause.

If any provision of this subchapter, or the application thereof to any person or circumstances, is held invalid the remainder of this subchapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 323.)

Effective Date

See note to section 45–721.

§ 45–744. Appropriations.

There are hereby authorized to be appropriated such amounts as may be necessary for the carrying out of the provisions of this subchapter, including the use of stamps or other devices for evidencing payment of the tax imposed by this subchapter. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 324.)

Effective Date

See note to section 45–721.

Chapter 8.—ESTATES IN LAND

§ 45–816. Tenancies in common and joint tenancies.

NOTES TO DECISIONS

2.50. Severance of joint tenancy

Under circumstances, execution of deed of trust by daughter as one joint tenant in favor of mother as the second joint tenant did not serve either to "sever" the joint tenancy or establish that a joint tenancy never existed between mother and daughter. *J. Maynard* v. *L. M. Sutherland* (1962, 313 F. 2d 560, 114 U.S. App. D.C. 169).

Joint tenants are free to contract with each other for the use of the common property and even to provide for exclusive use of the property by one of them. *Id.*

§ 45-820. Estates by sufferance.

NOTES TO DECISIONS

12. Tenant holding over

Evidence sustained finding that person, who had been appointed as conservator of tenant's estate had orally agreed, as representative of tenant by sufferance, to pay increased rental for leased premises. *W. E. Summerbell et ano.* v. *W. B. McDonnell, Individually etc.* (D.C. App. 1964, 197 A. 2d 150).

Chapter 9.—LANDLORD AND TENANT

§ 45-906. Service of notice.

NOTES TO DECISIONS

1. Generally

The same exactness is not required in the serving of a notice to quit as in the serving of a summons in a landlord and tenant action. *N. Custis* v. *S. Klein* (D.C. Mun. App. 1962, 177 A. 2d 268).

§ 45-915. Landlord's lien for rent.

NOTES TO DECISIONS

7. Priority

Landlords of taxpayer had no judgment lien and were not "judgment creditors" of taxpayer on August 4 when United States recorded its federal tax lien, and federal tax lien would prevail over judgment lien of landlords, where government assessed taxpayer on May 26 for unpaid federal taxes, and on July 5 landlords began suit for unpaid rent and obtained writ of attachment, and on July 11, 1961 writ was executed by United States marshal who seized goods belonging to taxpayer, and on August 4 government's tax lien was filed, and on August 18, 1961 landlords obtained judgment in municipal court. *United States* v. *L. Leventhal et al.* (1963, 316 F. 2d 341, 114 U.S. App. D.C. 340).

Where landlords of taxpayer had statutory lien on date when government assessed taxpayer for unpaid federal taxes, but no steps at all were taken to assert or enforce landlords' lien before federal tax lien was filed, landlords' lien was an inchoate unperfected lien which did not have precedence over lien of government. *Id.*

Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

§ 45-1401. Acting as broker or salesman without license unlawful.

NOTES TO DECISIONS

Admission against interest .50
Construction of chapter 1
Evidence 1.50
Police power 2
Sufficiency of information 4.50

.50. Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

1. Construction of chapter

Purpose of Real Estate and Business Brokers' License Act of District of Columbia is to protect public against evil, fraudulent, and dishonest practices which sometimes occur in real estate brokerage business, and although act is in derogation of common law, it must be construed in the light of such purpose. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

1.50. Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

2. Police power

The Real Estate and Business Brokers' License Act of District of Columbia constitutes an exercise of police power for protection of public interest. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

4.50. Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

§ 45-1402. Definitions—Exceptions.

NOTES TO DECISIONS

Admission against interest 1.50
Evidence 1.51
Relationship of parties 3
Sufficiency of information 4.50

1.50. Admission aganist interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

1.51. Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

3. Relationship of parties

Plaintiff, who did not have authority to submit, accept, or reject, offers or proposals but who did have authority to procure a prospective purchaser for property and who did find a prospective purchaser who in turn entered into a contract for purchase of land, was a "broker" within meaning of statute requiring licenses from one acting for compensation or consideration in buying or selling real estate for another and he could not recover for his services when he was not so licensed. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

4.50. Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

§ 45-1403. Real Estate Commission created—Membership—Seal—Records—Compensation.

NOTES TO DECISIONS

1. Validity of membership

District of Columbia Board of Commissioners had power, under Reorganization Plan No. 5 of 1952, to determine number and composition of Real Estate Commission, and Commission, composed of five members as specified in Reorganization Order No. 59, had jurisdiction to suspend real estate broker's license. *K. Kennedy* v. *Real Estate Commission etc.* (D.C. App. 1964, 202 A. 2d 774.)

§ 45–1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

NOTES TO DECISIONS

Accrual of cause of action .50
Recovery on bond 2

.50. Accrual of cause of action

Owners' cause against surety of real estate broker engaged by them to manage their property and to protect them from foreclosure by forwarding rents collected to holder of first trust accrued when owners were notified of default by broker and of intention of holder or first trust to foreclose where there was nothing in agreement which would indicate that demand upon broker was prerequisite to performance, and action not brought within one year statutory period was barred. *Phoenix Assurance Company of N.Y.* v. *S. and F. Basil* (D.C. App. 1963, 189 A. 2d 365).

2. Recovery on bond

Real estate broker could not recover from surety on real estate salesman's bond of broker's sales manager who had failed to account for money received by him from broker's salesmen who had obtained the money from prospective purchasers. *E. D. Collier* v. *Hartford Accident & Indemnity Co.* (D.C. Mun. App. 1962, 180 A. 2d 846).

§ 45–1407. Details relating to license.

NOTES TO DECISIONS

4. Relationship of parties

Under statutes requiring real estate broker to have a license and prohibiting a person, who is engaged in business or acting in capacity of real estate broker or salesman, from bringing an action for compensation for any services performed as such without proving that he is licensed, a contract for payment of compensation to an unlicensed broker or salesman for services rendered as such is not merely unenforceable but is void. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

Essential feature of real estate broker's conventional employment is to procure a purchaser for property ready, able, and willing to buy at the price and on terms of the listing or at a different price and on different terms mutually agreed upon by owner and purchaser, and it is not a prerequisite to right to compensation that broker conduct negotiations between the parties after they have been brought into contact with each other through his efforts. *Id.*

§ 45–1408. Suspension or revocation of license—Causes enumerated.

NOTES TO DECISIONS

Accrual of cause of action .50
Constitutional rights 2.50
Misrepresentation 6
Sufficiency of evidence 14
Trust funds 15

.50. Accrual of cause of action

Owners' cause against surety of real estate broker engaged by them to manage their property and to protect them from foreclosure by forwarding rents collected to holder of first trust accrued when owners were notified of default by broker and of intention of holder of first trust to foreclose where there was nothing in agreement which would indicate that demand upon broker was prerequisite to performance, and action not brought within one year statutory period was barred. *Phoenix Assurance Company of N.Y.* v. *S. and F. Basil* (D.C. App. 1963, 189 A. 2d 365).

2.50. Constitutional rights

Where real estate agent was not prevented from remitting money due to her principal and asserting her claim against principal in separate complaint but chose instead unsuccessfully to attempt to set off her claim against principal, she was not denied constitutional right of free access to courts. *S. V. Watwood* v. *Real Estate Commission etc.* (D.C. App. 1964, 196 A. 2d 635).

6. Misrepresentation

Record on review by Municipal Court of Appeals sustained decision of Real Estate Commission suspending petitioner's license as a real estate broker on the grounds that she had made a substantial misrepresentation and had demonstrated such unworthiness to act as broker as to endanger interests of the public. *D. B. Quander* v. *The Real Estate Commissioners of the District of Columbia* (D.C. Mun. App. 1962, 179 A. 2d 386).

In reviewing ruling of Real Estate Commission suspending broker's license, Municipal Court of Appeals was bound to credit testimony adverse to license holder. *Id.*

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

14. Sufficiency of evidence

Evidence sustained findings of the Real Estate Commission, which suspended broker's license for 120 days, that broker violated the code by failure, within a reasonable time, to account, by demonstrating unworthiness or incompetency to act as a real estate broker, and by fraudulent or dishonest dealing. *R. A. Brawner* v. *The Real Estate Commission of the District of Columbia* (D.C. App. 1963, 190 A. 2d 818).

Evidence supported finding that broker, who allegedly agreed to manage apartment buildings for 5 per cent of gross rentals but charged substantial amounts over and above 5 per cent without knowledge or consent of clients, violated statutory provisions proscribing making of substantial misrepresentation or demonstration of unworthiness or incompetency to act as real estate broker but did not violate other provisions proscribing failure within reasonable time to account for or remit property of others or fraudulent or dishonest dealing. *G. F. Worthington III* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 639).

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresentation, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

15. Trust funds

Real estate agent who on behalf of property owner receives money from tenants is trustee of such funds and cannot set off personal debt owed him by owner against payments due under trust; equity treats fiduciary as holding res in separate capacity. *S. V. Watwood* v. *Real Estate Commission etc.* (D.C. App. 1964, 196 A. 2d 635).

Where real estate agent by attempting to set off from rent money which he owed to property owner a debt owed him by owner violated statute requiring accounting and remittance of money or other property within reasonable time, agent's good faith was not defense but only fact to be considered in mitigation of punishment. *Id.*

§ 45–1409. Hearing before suspension—Court review—Appeal.

* * * * *

A final decision or determination of the Commission denying, suspending, or revoking a license may be reviewed in the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 9.)

AMENDMENTS

1963—Sec. 9 of act Dec. 23, 1963, amended the section by striking out the 9th and 10th sentences in the first paragraph and the entire second paragraph and inserted in lieu thereof the matter above set out.

NOTES TO DECISIONS

Hearing, when required 1.50
Recovery of commissions 3

1.50. Hearing, when required

Proceeding to revoke license issued by Real Estate Commission of District of Columbia for conviction of licensee of forgery, embezzlement, obtaining money under false pretenses, or like offense does not necessarily require hearing and if Commission receives certified copy of court record showing such conviction no further proof is required and Commission must revoke license. *O. T. Whiting, Jr.* v. *Real Estate Commission of the District of Columbia* (D.C. App. 1964, 198 A. 2d 742).

If Real Estate Commission of District of Columbia receives certified copy of court record showing conviction of licensee of forgery, embezzlement, obtaining money under false pretenses or like offense evidence cannot be received controverting record and there is no room for argument. *Id.*

License of real estate broker convicted of engaging in business of wagering without registering or paying occupational tax should not have been revoked by Real Estate Commission without hearing to determine whether offense was "like offense" under statute requiring revocation upon conviction for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

Offense of engaging in business of wagering without registering or paying occupational tax was not ground for revoking license under statute requiring revocation of license by Real Estate Commission of District of Columbia when licensee is convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

3. Recovery of commissions

A broker procuring a purchaser for real property who entered into a binding contract with the vendor earned his commission and was entitled to receive it from the vendor when the transaction was abandoned by the parties when the vendor resold the property to others. *S. Blanken* v. *Bechtel Properties, Inc.* (1961, 194 F. Supp. 638; aff'd 299 F. 2d 928).

§ 45–1415. License revoked on conviction of crime.

NOTES TO DECISIONS

1. Hearing, when required

Proceeding to revoke license issued by Real Estate Commission of District of Columbia for conviction of licensee of forgery, embezzlement, obtaining money under false pretenses, or like offense does not necessarily require hearing and if Commission receives certified copy of court record showing such conviction no further proof is required and Commission must revoke license. *O. T. Whiting, Jr.* v. *Real Estate Commission of the District of Columbia* (D.C. App. 1964, 198 A. 2d 742).

If Real Estate Commission of District of Columbia receives certified copy of court record showing conviction of licensee of forgery, embezzlement, obtaining money under false pretenses or like offense evidence cannot be received controverting record and there is no room for argument. *Id.*

License of real estate broker convicted of engaging in business of wagering without registering or paying occupational tax should not have been revoked by Real Estate Commission without hearing to determine whether offense was "like offense" under statute requiring revocation upon conviction for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

Offense of engaging in business of wagering without registering or paying occupational tax was not ground for revoking license under statute requiring revocation of license by Real Estate Commission of District of Columbia when licensee is convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

TITLE 46.—SOCIAL SECURITY

Chapter 1.—CARE OF BLIND

§§ 46–101 to 46–116. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 24.

Sections 1 to 16 of act Aug. 24, 1935, 49 Stat. 744, ch. 639, related to the care of needy blind persons. They authorized and directed the D.C. Commissioners to enforce the provisions of the sections, to make rules and regulations, defined the term, "needy blind person," prescribed the eligibility requirements for assistance, the form of the application, the amount of benefits, appeal from denial of aid, provided that blind persons receiving aid were not to solicit alms, discontinued aid to blind persons who moved from the District, denied benefits to capable persons who refused to work or who refused to submit to treatment, allowed no benefits to persons intentionally destroying their eyesight, made certain relatives liable for the support of the blind person, allowed the recoupment of benefits paid from the estate of the recipient, prescribed penalties for fraudulently obtaining aid, provided for liberal construction of the sections and included the usual implementing provisions. The subject is now covered by Title 3, chapter 2.

EFFECTIVE DATE

See note to section 3–201.

SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [46–101 to 46–116] which it now has, or which would have accrued had such Acts not been repealed, shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act." [Title 3, chapter 2.]

Chapter 2.—OLD-AGE ASSISTANCE

§§ 46–201 to 46–215. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 24.

Sections 1 to 15 of act Aug. 24, 1935, 49 Stat. 748, ch. 640, related to old-age assistance to needy persons. The sections defined the term "assistance", outlined the eligibility requirements of needy persons for assistance, designated the D.C. Commissioners the administrator of the program, directed them to prescribe and print the forms of application, to make rules and regulations, authorized them to determine the amount of assistance and the manner thereof, provided that old age benefits were non-assignable and not subject to levy or execution, authorized payment of reasonable funeral expenses on death of a recipient, directed investigations to be made of applications for old-age assistance, provided for periodical review of assistance payments and the making of adjustments and suspensions where necessary, prescribed penalties for fraud in procuring assistance, designated the relatives who would be liable for the support of a needy old person, authorized the recoupment of benefits paid from the estate of recipient and included the usual implementing provisions. The subject matter is now covered by Title 3, chapter 2.

EFFECTIVE DATE

See note to section 3–201.

SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [sections 46–201 to 46–215] which it now has, or which would have accrued had such Acts not been repealed shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act." [Title 3, chapter 2.]

§ 46–201. Old-age assistance—Definitions.

NOTES TO DECISIONS

1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc.* v. *F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

§ 46–211. Liability of relatives for support—Suit to recover.

NOTES TO DECISIONS

1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc.* v. *F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

§ 46–212. Estate of recipient liable for assistance—Transfer of property to Board as security.

NOTES TO DECISIONS

1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc.* v. *F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

Chapter 3.—UNEMPLOYMENT COMPENSATION

§ 46–301. Definitions.

* * * * *

(b)(5) * * *

(G) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious or charitable purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

* * * * *

(v) The term "insured work" means employment for employers. (Amended, Mar. 30, 1962, 76 Stat. 46, Pub. L. 87–424, §§ 1, 2.)

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (b)(5)(G) by striking out "religious, charitable, scientific, literary, or educational purposes" and inserting in lieu thereof "religious or charitable purposes" and by adding subsection (v) thereto.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 10 of act Mar. 30, 1962, provided as follows: "The amendments made by this Act [amending sections 46–301, 46–303, 46–307, 46–309, and 46–310] shall take effect on the first day of the first calendar quarter which begins after the date of enactment of this Act" [Mar. 30, 1962].

NOTES TO DECISIONS

1. Charitable or educational organization

Girl Scouts is an organization operated for "charitable purposes" within Unemployment Compensation Law exempting establishments operated exclusively for charitable purposes, the word "charity" being broader than relief of the needy or poor, and including a large group of activities for betterment of individuals or of the entire community. *National Capital Girl Scout Council etc.*, v. *District Unemployment Compensation Board etc., et al.* (1964, 231 F. Supp. 546).

The word "exclusively" within Unemployment Compensation Law exempting establishments organized and operated exclusively for religious or charitable purposes means "primarily" or "principally" or "in large part." *Id.*

The National Capital Girl Scout Council is not primarily or principally an educational establishment and hence is entitled to be exempt from unemployment insurance provision of District of Columbia Code exempting establishments organized and operated exclusively for religious or charitable purposes. *Id.*

§ 46–303. Employer contributions.

* * * * *

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

(1) The Board shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939. Each year the Board shall credit to each of such accounts having a positive reserve on the computation date, the interest earned from the Federal Government in the following manner: Each year the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to the District's account in the unemployment trust fund in the Treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on the pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the Treasury of the United States to the account of the District, any voluntary contribution made by an employer after June 30 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. Nothing in this chapter shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

* * * * *

(4) (i) No employer's rate of contribution for any calendar year or part thereof shall be reduced below the standard rate unless and until his account could have been charged with benefits paid throughout the thirty-six-consecutive-calander-month period ending on the computation date applicable to such year or part thereof: *Provided*, That for the calendar year 1963, and for each calendar year thereafter, any employer who is subject to this chapter by virtue of the amendment of section 43–301(b)(5)(G) by the Act of March 30, 1962, [Pub. L. 87–424] and who has not been subject to this chapter for a sufficient period to meet this requirement, may qualify for a rate less than the standard rate if his account could have been charged with benefit payments throughout a lesser period but, in no event, less than the twelve consecutive calendar months ending on the computation date (as herein defined) for that calendar year.

* * * * *

(5) The Board shall for any uncompleted portion of the calendar year beginning with the effective date of this chapter and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts. Each employer's contribution rate for each subsequent year or part thereof shall be calculated on the basis of his records filed with the Board and benefit payments disbursed through the applicable computation date. The Board shall compute rates for the second six months of 1963 for all employers first acquiring the necessary twelve months' benefit experience under section 46–303(c)(4)(i) on the computation date June 30, 1963. Such rates shall be based upon such employer's experience in the payment of contributions and benefits charged against his account through June 30, 1963, prior to the crediting of his account with trust fund interest. All employers issued a rate for the second six months of 1963, under this subsection, shall have a computation date of September 30, 1963, for the calendar year 1964.

* * * * *

(8) * * *

(i) If as of the computation date the total of all contributions credited to any employer's account, with respect to employment since May 31, 1939, is in excess of the total benefits paid after June 30, 1939, then chargeable or charged to his account, such excess shall be known as the employer's reserve, and his contribution rate for the ensuing calendar year or part thereof shall be—

(A) 2.7 per centum if such reserve is less than 0.8 per centum of his average annual payroll;

(B) 2 per centum if such reserve equals or exceeds 0.8 per centum but is less than 1.3 per centum of his average annual payroll;

(C) 1.5 per centum if such reserve equals or exceeds 1.3 per centum but is less than 1.8 per centum of his average annual payroll;

(D) 1 per centum if such reserve equals or exceeds 1.8 per centum but is less than 2.8 per centum of his average annual payroll;

(E) 0.5 per centum if such reserve equals or exceeds 2.8 per centum but is less than 3.3 per centum of his average annual payroll;

(F) 0.1 per centum if such reserve equals or exceeds 3.3 per centum of his average annual payroll.

* * * * *

(iv) Any employer, at any time, may voluntarily pay into the unemployment compensation fund an amount in excess of the contributions required to be paid under the provisions of this chapter, and such amount shall be forthwith credited to his reserve account. His rate of contribution shall be computed, or recomputed, as the case may be, with such amount included in the calculation. To affect such employer's rate of contribution for any year, such amount shall be paid not later than thirty days following the mailing of notice of his rate of contribution for such year, and not later than one hundred and twenty days after the commencement of such year. Such amount, when paid as aforesaid, shall not be refunded or used as a credit in the payment of contributions in whole or in part.

* * * * *

(9) As used in this subsection—

* * * * *

(b) The term "average annual pay roll", except for the purposes of paragraph (4)(iv) of this subsection, means the average of the annual pay rolls of any employer for the three consecutive twelve-month periods ending ninety days prior to the computation date: *Provided,* That for an employer whose account could have been charged with benefit payments throughout at least twelve but less than thirty-six consecutive calendar months ending on the computation date, the term "average annual pay roll" means the total amount of wages for employment paid by him during the twelve-month period ending ninety days prior to the computation date;

* * * * *

(As amended Mar. 30, 1962, 76 Stat. 47, Pub. L. 87–424, §§ 3, 4, 5; Sept. 27, 1962, 76 Stat. 663, Pub. L. 87–705, § 1 (a), (b), (c).)

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (c)(1) to read as above set out. It also amended subsection (c)(8)(i) to read as above set out and added subsection (c)(8)(iv). For prior provisions of the amended subsections see main volume of the Code.

Section 1(a) of act Sept. 27, 1962, amended subsection (c)(4)(i) by striking out the period at the end thereof, inserting a colon and the proviso clause as above set out.

Section 1(b) of the same act amended subsection (c)(5) by adding the last three sentences beginning with the words "The Board shall compute—" and ending with "—for the calendar year 1964".

Section 1(c) of the same act amended subsection (c)(9)(b) by striking out the semicolon at the end thereof, inserting a colon and the proviso clause.

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to section 46–301.

NOTES TO DECISIONS

2.50. Collective bargaining agreements

Controversy regarding employer's failure to secure additional compensation benefits as specified in collective bargaining agreement had to be submitted to arbitration under mandatory provision for arbitration of labor disputes, and trial court should not have undertaken determination of merits prior to arbitration. *C. D. Mayhew, Inc.,* v. *J. L. Pate* (D.C. App. 1964, 202 A. 2d 786).

§ 46–307. Amount and duration of benefits.

* * * * *

(b) An individual's "weekly benefit amount" shall be an amount equal to one twenty-third (computed to the next higher multiple of $1) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, with such other following limitations. If an individual's weekly benefit amount is less than $8, it shall be $8. The Director shall determine annually a maximum weekly benefit amount by computing 50 per centum of the average weekly wage paid to employees in insured work, and shall on or before January 1 of the calendar year in which it shall be effective announce by publication in at least one newspaper of general circulation in the District, the maximum weekly benefit amount so determined. Such computation shall be made by determining total wages reported as paid for insured work by employers in each twelve-month period ending June 30, and dividing said total wages by a figure resulting from fifty-two times the average of mid-month employment reported by employers for the same period. For the period from the effective date of this Act to December 31, 1962, the maximum weekly benefit amount shall be determined and announced by the Director in accordance with the foregoing formula on the basis of wages and employment in the twelve-month period ending June 30, 1961. The maximum weekly benefit amount so determined and announced for a calendar year shall apply only to those claims filed in that year qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in said amount for a subsequent calendar year. If the maximum weekly benefit amount is not a multiple of $1, then said maximum weekly benefit amount shall be computed to the next higher multiple of $1.

(c) To qualify for benefits an individual must have (1) been paid wages for employment of not less than $130 in one quarter in his base period, (2) been paid wages for employment of not less than $276 in not less than two quarters in such period, and (3) received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages for the quarter in such period in which his wages were the highest. Notwithstanding the provisions of clause (3), any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such clause, may qualify for benefits if the differences between the amounts so required to have been received and the total amount of his wages during such period does not exceed $70, but the amount of his weekly benefit, as computed under section 7(b), shall be reduced by $1 if such difference does not exceed $35 or by $2 if such difference is more than $35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year and paid by employers who were his base period

employers in such last base period shall not be available for benefit purposes in a subsequent benefit year unless he has, subsequent to the commencement of such last benefit year, received remuneration for personal services, whether or not such services were performed in employment as defined in this chapter, in an amount equal to at least ten times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Board, by any amount received with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer. An amount received with respect to a period other than a week shall be prorated by weeks. No reduction shall be made under the preceding two sentences for (A) any retirement pension or annuity received by reason of disability, or (B) any amount received under title II of the Social Security Act.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to thirty-four times his weekly benefit amount or 50 percent of the wages for employment paid to such individual by employers during his base period whichever is the lesser. Such total amount of benefits, if not a multiple of $1, shall be computed to the next higher multiple of $1.

* * * * *

(f) DEPENDENT'S ALLOWANCE.—In addition to the benefits payable under the foregoing subsections of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week $1 for each dependent relative, but not more than $3 shall be paid to an individual as dependent's allowance with respect to any one week of unemployment nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than the established maximum benefit amount. An individual's number of dependents shall be determined as of the day with respect to which he first files a valid claim for benefits in any benefit year, and shall be fixed for the duration of such benefit year. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7, formerly § 8; June 2, 1940, 54 Stat. 732, ch. 524, § 1; June 4, 1943, 57 Stat. 112, ch. 117; Aug. 31, 1954, 68 Stat. 993, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 48, Pub. L. 87–424, §§ 5, 6, 7.)

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsections (b), (c), and (d) to read as above set out and also amended subsection (f) by striking out "$30" and inserting in lieu thereof the words "the established maximum benefit amount".

For provisions of subsections (b), (c), and (d) prior to this amendment see main volume of the Code.

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to sections 46–301.

INTERNAL REFERENCES

"This Act" referred to in subsection (b) is act of Mar. 30, 1962. For effective date of act see note to section 46–301.

Title II of the Social Security Act referred to in subsection (c) is set out in U.S. Code, Title 42, chapter 7.

§ 46–309. Eligibility for benefits.

* * * * *

(b) that he has during his base period been paid wages for employment by employers equal to those required by subsection (c) of section 46–307.

* * * * *

(As amended Mar. 30, 1962, 76 Stat. 49, Pub. L. 87–424, § 8.)

AMENDMENT

1962—Act Mar. 30, 1962, amended clause (b) to read as above set out. Prior to amendment clause (b) read as follows: "that he has during his base period been paid wages for employment by employers equal to not less than the amount appearing in column 'C' of the table in section 46–307(b), on the line on which in column 'B' his weekly benefit amount appears."

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to sections 46–301.

§ 46–310. Disqualification for benefits.

* * * * *

(d) (1) Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, earnings, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(2) Compensation shall not be denied to any otherwise eligible individual for any week during which he is attending a training or retraining course with the approval of the Board, and such individual shall be deemed to be otherwise eligible for any such week despite the provisions of section 46–309(d) and subsection (c) of this section.

(e) If any individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, to attend a training or retraining course when recommended by the manager of the employment office or by the Board and such course is available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred.

* * * * *

(As amended Mar. 30, 1962, 76 Stat. 49, Pub. L. 87–424, § 9.)

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsections (d) and (e) to read as above set out. For provisions of subsections (d) and (c) prior to this amendment see main volume of the Code.

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to section 46–301.

§ 46–313. Administration.

* * * * *

(f) DISCLOSURE OF INFORMATION.—Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall

be held confidential and shall not be disclosed or be open to public inspection in any manner, whether by subpena or otherwise, revealing the individual's or employing unit's identity. Any claimant (or his legal representative) shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding under this chapter with respect thereto. Subject to such restrictions as the Board may by regulation prescribe, such information may be made available to any agency of this or any other State, or any Federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Department of Public Welfare of the government of the District of Columbia, or the United States Accounting Office or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the Board shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any State agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The Board may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606 (c) of the Federal Internal Revenue Code.

* * * * *

(As amended Aug. 30, 1964, 78 Stat. 696, Pub. L. 88–514, § 1.)

AMENDMENT

1964—Section 1 of act Aug. 30, 1964, amended the third sentence of subsection (f) by inserting after "public employment offices", the following ", or the Department of Public Welfare of the government of the District of Columbia, or the United States Accounting Office".

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chapter 1.—GENERAL PROVISIONS

Sec.
47–126a. Fees and fines.
47–140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.
47–141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.
47–142. Small sums—Exemptions from notice requirements.
47–143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.
47–144. "Commissioners" defined.

§ 47–126a. Fees and fines.

There shall be credited to the District of Columbia that proportion of the fees and fines collected by the United States District Court for the District of Columbia, including fees and fines collected by the offices of the clerk of that court, of the Register of Wills of the District of Columbia, and of the United States marshal for the District of Columbia, as the amount paid by the District of Columbia toward salaries and expenses of such court and of the offices of the United States attorney for the District of Columbia and of the United States marshal for the District of Columbia bears to the total amount of such salaries and expenses; and such proportion of the fees and fines, if any, collected by the United States Court of Appeals for the District of Columbia Circuit, including fees and fines, if any, collected by the office of the clerk of that court, as the amount paid by the District of Columbia toward the salaries and expenses of such court bears to the total amount of such salaries and expenses. (July 26, 1939, 53 Stat. 1107, ch. 367, title III; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 2, 1949, 63 Stat. 491, ch. 383, § 7.)

AMENDMENT

1949–Act Aug. 2, 1949, inserted the words "of the Register of Wills of the District of Columbia" after the words "including fees and fines collected by the offices of the clerk of that court," and deleted the words "On and after July 1, 1939," at the beginning of the section.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act Aug. 2, 1949, effective July 1, 1949, see section 10 of act Aug. 2, 1949, set out as a note under section 19–401.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, Title 28, § 501.

TRANSFER OF SECTION

This section was formerly section 330 of former Title 11.

§ 47–131. Repealed. October 3, 1964, 78 Stat. 1001, Pub. L. 88–622, § 6; effective July 1, 1963.

Section, act July 9, 1946, 60 Stat. 514, § 1, established a working capital fund for industrial enterprises at the workhouse and reformatory. The matter is now covered by sections 24–451 to 24–455.

Section 6 of the act also repealed the proviso in the par following the caption "Operating Expenses" under the heading "DEPARTMENT OF CORRECTIONS" in the first section of the act of July 5, 1952, 66 Stat. 380. This matter was not classified to the code.

§ 47–140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

In any case in which any money has been held in trust for, or for the account of, any person by the government of the District of Columbia pursuant to statute or otherwise, and no communication, in writing or otherwise as indicated by a written memorandum, has been received by the government of the District of Columbia concerning such money from the person entitled thereto, for a period of not less than ten years, the Commissioners shall send notice by registered or certified mail to the last known address of the person for whom such money is being held. Such mailed notice shall contain a statement that money is being held for such person and if no written claim for the return thereof is submitted to the Commissioners within sixty days of the date such notice is mailed, any future claim therefor will, subject to the provisions of section 47–141, be forever barred. (Dec. 18, 1963, 77 Stat. 419, Pub. L. 88–211, § 1.)

§ 47–141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

(a) Not less than sixty days after the mailing of any notice pursuant to section 47–140 the Commissioners shall publish notice once each week for two successive weeks in a newspaper of general circulation in the District of Columbia. Such published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Unclaimed Money Held by the District of Columbia" and shall contain:

(1) The names and the last known addresses, if any, of the persons for whom moneys are being held (listed in alphabetical order of their surnames).

(2) A statement setting forth the substance of subsection (b) of this section.

(b) If no written claim for the return of any such money is submitted to the Commissioners by the date specified in the published notices, which date shall be not less than ninety days from the date of publication of the second notice, such moneys shall be deposited in the Treasury of the United States to the credit of the District of Columbia and all claims for such money shall be forever barred. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, § 2.)

§ 47–142. Small sums—Exemptions from notice requirements.

In any case where any money held in trust by the government of the District of Columbia for the period of time and under the same circumstances as specified in section 47–140 is in an amount less than the cost, as estimated by the Commissioners, of giving notice as required by sections 47–140 and 47–141, such money may be deposited in the Treasury of the United States to the credit of the District of Columbia without the necessity of complying with the notice requirements of sections 47–140 and 47–141, and after such deposit all claims for such money shall be forever barred. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, § 3.)

§ 47–143. Deduction of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

Upon the return of any money deposited with the government of the District of Columbia to the person making such deposit after notice has been given such person pursuant to sections 47–140 to 47–144, the Commissioners are authorized to deduct from such returned money the costs of mailing and publishing notices required by sections 47–140 to 47–144; and shall deposit the amount so deducted in the Treasury of the United States to the credit of the District of Columbia. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, § 4.)

§ 47–144. "Commissioners" defined.

As used in sections 47–140 to 47–144, the word "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agent. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, §5.)

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.
47–836. Woodrow Wilson House—Lots 36 and 37.

§ 47–836. Woodrow Wilson House—Lots 36 and 37.

Certain property in the District of Columbia described as lots numbered 36 and 37 in square numbered 2,517, as recorded in the office of the Surveyor of the District of Columbia in liber 64, at folio 69, together with the improvements thereon and the furnishings therein, being premises numbered 2340 S Street Northwest, known as the Woodrow Wilson House, owned by the National Trust for Historic Preservation in the United States, a corporation chartered by Act of Congress approved October 26, 1949, be exempt from all taxation, so long as the same is used in carrying on the purposes and activities of the National Trust for Historic Preservation in the United States, and is not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c and 47–801e. Use of the premises by agencies of the United States of America or by any organization exempt from Federal income taxation for museum purposes or conference accommodations shall not affect the exemption from taxation provided for herein. (Aug. 21, 1964, 78 Stat. 581, Pub. L. 88–470, § 1.)

Chapter 10.—REAL PROPERTY TAX SALES

§ 47–1003. Deposit required—Certificate of sale—Tax deed—Redemption.

NOTES TO DECISIONS

3. Redemption

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator under District of Columbia statutes. *Shenandoah Corp.* v. *E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

Chapter 11.—SPECIAL ASSESSMENTS

§ 47–1101. Protest against special assessment—Hearing—Report and exceptions—Decision.

NOTES TO DECISIONS

1.50 Jurisdiction of municipal court

Municipal Court for District of Columbia, under its equity powers, lacked jurisdiction to entertain cause of action by property owners to cancel special assessment by District for certain paving improvements to sidewalks and alley. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Chapter 12.—TAXATION OF PERSONAL PROPERTY

§ 47–1208. Personal property exempt from taxation.

NOTES TO DECISIONS

2. Private gain.

District of Columbia code provision making exempt from taxation the personal property of benevolent and charitable institutions "not conducted for private gain" uses the quoted phrase to modify "institutions" and not "personal property," and accordingly restaurant property of religious shrine which was leased to private operator under percentage agreement, with the monies derived by the shrine therefrom going to its further development, was exempt from taxation. *District of Columbia* v. *The National Shrine of the Immaculate Conception, Inc.* (1963, 315 F. 2d 42, 114 U.S. App. D.C. 296).

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

§ 47–1406. Certificates of delinquent personal tax—Filing—Lien—Enforcement.

NOTES TO DECISIONS

1. Priority of lien

District of Columbia had a lien which arose and existed on date District income taxes were withheld or were required to be withheld by employer, and lien had priority over other claims, such as claim for unpaid rent, even though District had not filed a certificate of delinquent taxes. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

Chapter 15.—INCOME AND FRANCHISE TAXES

§ 47–1551c. General definitions.

NOTES TO DECISIONS

Congressional intent in relation to capital gain 1.50
Dividends 2

1.50 Congressional intent in relation to capital gains

Congress intended to give different treatment to taxpayers in District of Columbia than to those who might be liable to capital gains taxes under federal scheme. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

2. Dividends

Under District of Columbia tax statute which in defining "dividends" reached distribution out of corporation's earnings, profits or surplus whenever earned by corporation, undistributed earnings in 1957 and 1958, utilized on corporate books to reduce accumulated deficit, retained character as earnings and became source of possible

dividends in later year. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

Under statute defining "dividend" as any distribution made by corporation to stockholders out of earnings, profits or surplus whenever earned by corporation, unrealized appreciation in value of improved realty which was held by corporation for income and not for sale did not become a "dividend" when corporation distributed assets to stockholders upon dissolution. *District of Columbia* v. *B. W. Oppenheimer* (1962, 301 F. 2d 563, 112 U.S. App. D.C. 329).

§ 47–1557a. Gross income and exclusions therefrom.

NOTES TO DECISIONS

.50. Gross income

"Gross income" within District of Columbia income tax statute did not mean, without more, "income derived from any source whatever," and scope of phrase is limited by exceptions built into code. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

§ 47–1557b. Deductions.

NOTES TO DECISIONS

1. Depreciation method

District of Columbia Income and Franchise Tax Act revealed congressional intent to permit allowance for depreciation based on the declining balance method. *Broadcasting Publications, Inc.* v. *District of Columbia; District of Columbia* v. *Broadcasting Publications, Inc.* (1963, 313 F. 2d 554, 114 U.S. App. D.C. 163).

Taxpayer would be allowed use of declining balance method of depreciation in determining tax due under District of Columbia Income and Franchise Tax Act, in absence of regulation on such subject pursuant to such Act or showing by District that such method was unreasonable. *Id.*

§ 47–1571a. Imposition and rate of tax.

NOTES TO DECISIONS

6.50. Sales to the United States

Under Income and Franchise Tax Act of 1947, as amended, sales of tangible personal property to the United States by a corporation having its principal place of business in District of Columbia were apportionable on same basis as sales of like property to private customers, and District's contention that all of taxpayer's sales to United States were subject to tax and not apportionable was opposed to interpretation of statute and rule set out in District's own regulations. *District of Columbia* v. *Gallant Incorporated* (1962, 306 F. 2d 761, 113 U.S. App. D.C. 92).

§ 47–1574. Definition of unincorporated business.

NOTES TO DECISIONS

1.50. Engaging in business

Where physician devoted all his time to practice of his profession and relied upon his real estate adviser for purchase or making of first trust notes or purchase of real estate, collections were made by bank, and physician did not follow up delinquent accounts, and had no employees or office connected with his investments, physician was not engaged in "business" of lending within District of Columbia Code imposing tax on privilege of engaging in any business within District. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

In action by taxpayer against District of Columbia for recovery of franchise taxes paid on basis that he had been engaged in business of renting real estate, wherein evidence as to whether taxpayer, a practicing physician, had wholly parted with management and control of three of his properties that were rented was not conclusive, and trial court made no finding on such issue, case would be remanded for further consideration of that phase. *Id.*

Neither ownership per se nor even leasing of property by owner necessarily constitutes carrying on business of renting real estate within District of Columbia franchise tax imposed on businesses. *Id.*

§ 47–1580. Purpose of subchapter.

NOTES TO DECISIONS

12. Regulations of Commissioners

The 1961 amendments of District of Columbia franchise tax regulations were not retroactively applicable to determine tax liability for 1956 and hence a formula using only a sales factor must be employed under 1953 regulation so that sales principally secured, negotiated or effected in District were to be deemed District sales in determining proper method of apportioning to District that part of taxpayer's net income which was "fairly attributable" to business carried on in the District. *District of Columbia* v. *Gallant Incorporated* (1962, 305 F. 2d 761, 113 U.S. App. D.C. 92).

District of Columbia franchise tax regulations which provided that prior regulations were rescinded except for certain purposes in relation to years to which they were applicable were only regulations in effect as to tax year subsequent to promulgation of such regulations. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47–1580a. Allocation and apportionment.

NOTES TO DECISIONS

Apportionment formula 2
Sales to the United States 8.50
Tax Court's authority 10

2. Apportionment formula

Circulation test is not exclusive apportionment formula, for District of Columbia income tax purposes, as to all types of publications carried on partly within and partly outside the District. *Broadcasting Publications, Inc.* v. *District of Columbia; District of Columbia* v. *Broadcasting Publications, Inc.* (1963, 313 F. 2d 554, 114 U.S. App. D.C. 163).

Entire income of trade magazine printed and published in District of Columbia by taxpayer whose subscribers and advertisers were almost entirely outside the District, was subject to tax in District, where greater part of total business activity, including mailing of magazines to subscribers, was carried on within District, and there was no continuous physical contact outside District except for news gathering and solicitation of advertisers. *Id.*

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

8.50. Sales to the United States

Under Income and Franchise Tax Act of 1947, as amended, sales of tangible personal property to the United States by a corporation having its principal place of business in District of Columbia were apportionable on same basis as sales of like property to private customers, and District's contention that all of taxpayer's sales to United States were subject to tax and not apportionable was opposed to interpretation of statute and rule set out in District's own regulations. *District of Columbia* v. *Gallant Incorporated* (1962, 305 F. 2d 761, 113 U.S. App. D.C. 92).

10. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47–1583e. Depreciation.

NOTES TO DECISIONS

1. Depreciation

Under law of District of Columbia, distributions from corporate earnings were dividends, fully taxable, but distributions from depreciation reserves were not income subject to tax. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

§ 47–1586. Duties of Assessor.

NOTES TO DECISIONS

Apportionment formula 1
Tax Court's authority 2

1. Apportionment formula

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

2. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47–1586f. Payment of tax.

(a) *Time of payment.*—(1) Except as provided in paragraph (2) of this subsection, the total amount of tax due as shown on the taxpayer's return is due and payable in full at the time prescribed in this article for the filing of such return.

* * * * *

(Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 201.)

AMENDMENTS

1962—Act Mar. 2, 1962, amended paragraph (1) of subsection (a) to read as above set out. For provisions of this paragraph prior to this amendment see main volume of the Code.

APPLICABLE DATE OF 1962 AMENDMENTS

Section 202 of act Mar. 2, 1962, provided that the amendment of paragraph (1) of subsection (a) "shall be applicable to the taxable years beginning after December 31, 1961".

§ 47–1586g. Withholding of tax.

NOTES TO DECISIONS

1. Effective date of lien

Lien for District of Columbia withholding taxes was without further action being taken, perfected or choate at time when income tax was or should have been withheld. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

§ 47–1593a. Election of remedy.

NOTES TO DECISIONS

1. Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

Chapter 16.—INHERITANCE AND ESTATE TAXES

§ 47–1601. Imposition of tax.

NOTES TO DECISIONS

Jointly owned property 8.50
Payment in lieu of support 10.50

8.50. Jointly owned property

Statute subjected to inheritance tax one half of value of shares of stock, which first sister had purchased with her own funds, and which first sister had registered jointly in names of herself and of second sister, with right of survivorship, on death of second sister. *P. McKimmey* v. *District of Columbia* (1962, 300 F. 2d 724, 112 U.S. App. D.C. 132).

10.50. Payment in lieu of support

A transfer in lieu of husband's obligation to support his first wife during their joint lives, or until her remarriage, was made for adequate and full consideration in money or money's worth, and if lump-sum payment made by executrix to first wife pursuant to property settlement agreement was in lieu of support obligation, it was not subject to a transfer tax. *District of Columbia* v. *F. C. Lewis etc.* (1961, 288 F. 2d 137, 109 U.S. App. D.C. 353).

§ 47–1602. Tax based on market value—Appraisal.

NOTES TO DECISIONS

2.50. Jointly owned property

Statute subjected to inheritance tax one half of value of shares of stock, which first sister had purchased with her own funds, and which first sister had registered jointly in names of herself and of second sister, with right of survivorship, on death of second sister. *P. McKimmey* v. *District of Columbia* (1962, 300 F. 2d 724, 112 U.S. App. D.C. 132).

Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

Sec.
47–1710. Applicability of Acts of Congress to national banks in the District of Columbia.

§ 47–1701. Banks, gas, electric-lighting, and telephone companies.

NOTES TO DECISIONS

12. Telephone company

Payments received by telephone company, which rendered telephone services to public in the District of Columbia, for services rendered to telephone companies doing business in Maryland and Virginia were not subject to gross receipts tax applicable to public utility companies doing business in District of Columbia. *The Chesapeake and Potomac Tel. Co.* v. *District of Columbia. District of Columbia* v. *The Chesapeake and Potomac Tel. Co.* (1963, 325 F. 2d 217, 117 U.S. App. D.C. 21).

The District of Columbia gross receipts tax applicable to public utility companies is an excise tax on privilege of furnishing franchised public utility services in the District. *Id.*

When a public service company supplies services or facilities to another public utility company in the same field for sole purpose of enabling the latter company to serve its customers more efficiently, such services are not public utility commodities or services within meaning of gross receipts tax statute applicable to public utility companies, and such services are not subject to gross receipts tax. *Id.*

§ 47–1710. Applicability of Acts of Congress to national banks in the District of Columbia.

The provisions of all Acts of Congress relating to national banks shall apply in the several States, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico. (Sept. 8, 1959, 73 Stat. 458, Pub. L. 86–230, § 14.)

CROSS REFERENCES

Taxation of national banks, see section 47–1701 and 12 U.S.C. 548.

Chapter 19.—MOTOR FUEL TAX

§ 47–1901. Rate—Use restricted.

CROSS REFERENCE

Provisions transferring parking funds to special account in highway fund, see note to section 40–808.

§ 47–1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

NOTES TO DECISIONS

1. Resident general agent

Foreign corporation was not entitled to a license to import motor-vehicle fuel into the District of Columbia where it failed to meet the qualifications of the statute and police regulation requiring an importer qualifying for a license to designate a local representative and to maintain a local office or place of business within the District. *Cities Service Oil Company* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 752, 113 U.S. App. D.C. 145).

District of Columbia motor fuel tax law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co.* v. *R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

§ 47–1916. Commissioners to make necessary regulations.

NOTES TO DECISIONS

1. Resident general agent

Foreign corporation was not entitled to a license to import motor-vehicle fuel into the District of Columbia where it failed to meet the qualifications of the statute and police regulation requiring an importer qualifying for a license to designate a local representative and to maintain a local office or place of business within the District. *Cities Service Oil Company* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 752, 113 U.S. App. D.C. 145).

District of Columbia motor fuel tax law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co.* v. *R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

Chapter 20.—DOG TAX

Sec.

47–2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.

§ 47–2003. Impounding of dogs found at large.

The poundmaster of the District of Columbia shall, during the entire year, seize all dogs found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of two dollars they shall be sold or destroyed, as the poundmaster may deem advisable; and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia: *Provided,* That no owner, keeper, or purchaser, shall be permitted to redeem any dog seized and impounded as aforesaid, nor shall the Poundmaster deliver any dog to an owner, keeper, or purchaser, unless such owner, keeper, or purchaser shall first satisfy the Poundmaster that he has obtained for such dog the tax tag provided for in section 47–2002, and if at such time there shall be in force a proclamation of the Commissioners requiring dogs to be vaccinated against rabies, such owner, keeper, or purchaser shall also satisfy the Poundmaster that such dog has been vaccinated against rabies in accordance with such proclamation. (June 19, 1878, 20 Stat. 173, ch. 323, § 3; June 30, 1902, 32 Stat. 547, ch. 1332; July 5, 1945, 59 Stat. 409, ch. 267, § 2; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 2(1).)

AMENDMENT

1961—Section 2(1) of act Sept. 13, 1961, struck out the following: "without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large". This makes it permissible for the poundmaster to seize all dogs running at large.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

§ 47–2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.

Any dog wearing the tax tag hereinbefore provided for shall be regarded as personal property in all the courts of said District, and any person injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper. (June 19, 1878, 20 Stat. 174, ch. 323, § 4; June 30, 1902, 32 Stat. 547, ch. 1332; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 2(2).)

AMENDMENT

1961—Section 2(2) of act Sept. 13, 1961, amended the section by striking out "That any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any" and inserting in lieu thereof "Any". This eliminates provision permitting licensed dogs to run at large.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept 13, 1961]

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

§ 47–2101. Employment agencies—License required—Definitions.

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be $100 per annum. Any license may be denied, revoked, or suspended for cause by the said commissioners. A person whose application for a license is denied, or whose license is revoked or suspended by the commissioners may

obtain a review of the action of the commissioners in the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (As amended Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 10.)

* * * * *

AMENDMENTS

1963—Section 10 of act, Dec. 23, 1963, amended the first paragraph by striking out the colon preceding the proviso and changing it to a period and by striking out everything in the paragraph beginning with the word "proviso" and inserting in lieu thereof the matter above set out beginning with the words, "A person whose".

Chapter 23.—GENERAL LICENSE LAW

§ 47–2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

NOTES TO DECISIONS

Moral character of applicant 5.50
Operators license 6.50

5.50. Moral character of applicant

Findings of Board of Revocation and Review of Hackers' Identification Cards that two applicants for licenses to drive taxicabs were not of good moral character were supported by substantial evidence. *Green, Williams, and Tymus* v. *Silver* (1962, 207 F. Supp. 133).

That applicant for license to drive taxicab was unable to purchase liability insurance, had violated parking regulations, and 11 years before, had had his operator's permit revoked for accumulation of traffic points did not constitute evidence as to moral fitness at time of application. *Id.*

That applicant for license to drive taxicab had been arrested in 1943 when in his early twenties, on disorderly conduct charge which government dropped was not sufficient evidence to support finding that he was not proper person to receive public vehicle operator's license in 1961. *Id.*

Board of Revocation and Review of Hackers' Identification Cards had right to consider prior arrest of applicant for public vehicle operator's license reflecting upon moral character of applicant, even though there was no trial and no conviction. *Id.*

6.50. Operators license

District of Columbia Board of Commissioners had authority to delegate to Board of Revocation and Review of Hackers' Identification Cards the Commissioners' powers to grant or deny licenses to operate taxicabs and, in reviewing Board's findings, only if action of board was arbitrary or unsupported by evidence may Board's judgment be overruled. *Green, Williams, and Tymus* v. *Silver* (1962, 207 F. Supp. 133).

§ 47–2339. Secondhand dealers—Classification—Licensing—Stolen property.

NOTES TO DECISIONS

.50. Res judicata

Finding that defendant was not guilty of conducting business dealing in secondhand personal property without first having obtained license to do so did not bar later information alleging that same offense had been committed after first judgment. *District of Columbia,* v. *J. O. King* (D.C. App. 1964, 201 A. 2d 530).

§ 47–2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

NOTES TO DECISIONS

3. Delegation of authority

Broad delegation to Board of Appeals and Review of jurisdiction over appeals submitted by applicants for licenses, permits and certificates from actions taken by responsible officials of Department of Licenses and Inspections is not inconsistent with statutes giving Commissioners of District of Columbia broad authority to enact regulations including regulations which delegate jurisdiction over licenses. *S. Brown* v. *W. N. Tobriner et al.* (1963, 218 F. Supp. 754).

Chapter 24.—DISTRICT OF COLUMBIA TAX COURT

§ 47–2402. Board of Tax Appeals—District of Columbia Tax Court.

* * * * *

The salary of such person so appointed shall be $23,500 per annum. The commissoners are authorized to employ such other personal servces as may be necessary to carry out the provisons of this chapter and to provide for the expenses of the board. The salaries of employees other than the board shall be fixed in accordance with the Classification Act of 1949, as amended, but such employees shall be appointed without regard to civil-service requirements. The commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized.

* * * * *

(As amended, Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(4).)

AMENDMENTS

1964—Section 306(i)(4) of act Aug. 14, 1964, amended the first sentence of the second paragraph by striking out $17,500 and inserting in lieu thereof $23,500, thus increasing the salary of the Judge to $23,500.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

NOTES TO DECISIONS

.50. Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

§ 47–2403. Appeal from assessment—Hearing and decision.

NOTES TO DECISIONS

13.50. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47–2406. Appeal from imposition of tax involuntarily paid—Suit.

NOTES TO DECISIONS

3. Voluntary payment

In District of Columbia, a tax payment voluntarily made cannot be recovered. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

Chapter 25.—MISCELLANEOUS PROVISIONS

§ 47–2501b. Additional annual payment by the United States.

* * * * *

(a) There are hereby authorized to be appropriated, in addition to the sums appropriated under section 47–2501a, as annual payments by the United States toward defraying the expenses of the government of the District of Columbia, the sum of $9,000,000 for each of the fiscal years 1955 and 1956, the sum of $12,000,000 for each of the fiscal years 1957 and 1958, the sum of $21,000,000 for each of the fiscal years 1959 through 1963, inclusive, and the sum of $39,000,000 for the fiscal year 1964 and for each fiscal year thereafter: *Provided,* That so much of the aggregate annual payments by the United States appropriated under this article to the credit of the general fund as is in excess of $13,000,000 for each of the fiscal years 1955 and 1956, $16,000,000 for each of the fiscal years 1957 and 1958, and $25,000,000 for the fiscal year 1959 and for each subsequent fiscal year through and including fiscal year 1963 shall be available for capital outlay only, and then on a cumulative total basis only to the extent of not more than 50 per centum of the cumulative total of capital outlay appropriations payable from such general fund which becomes available for expenditure on and after July 1, 1954.

* * * * *

(As amended Aug. 27, 1963, 77 Stat. 130, Pub. L. 88–104, § 1.)

NOTES TO DECISIONS

AMENDMENTS

1963—Section 1 of act Aug. 27, 1963, amended subsection (a) as follows:

(1) Struck out "and the sum of $21,000,000 for the fiscal year 1959 and for each fiscal year thereafter" and inserted in lieu thereof "the sum of $21,000,000 for each of the fiscal years 1959 through 1963, inclusive, and the sum of $39,000,000 for the fiscal year 1964 and for each fiscal year thereafter".

(2) Struck out in the proviso, "and subsequent fiscal years" and inserted in lieu thereof "and for each subsequent fiscal year through and including fiscal year 1963".

Chapter 26.—GROSS SALES TAX

§ 47–2601. Definitions.

* * * * *

14. (a) * * *

(b) 1. * * *

2. * * *

3. * * *

4. * * *

(5) Sales to a common carrier or sleeping-car company by a corporation all of whose capital stock is owned by one or more common carriers or sleeping-car companies of tangible personal property, procured or acquired by such corporation outside the District, which consists of repair or replacement parts used for the maintenance or repair of any train operating principally without the District in the course of interstate commerce, or commerce between the District and a State, provided such sales are made in connection with the furnishing of terminal services pursuant to a written agreement entered into before January 1, 1963.

* * * * *

(As amended Sept. 2, 1964, 78 Stat. 847, Pub. L. 88–564, § 1.)

AMENDMENT

1964—Act Sept. 2, 1964, amended subsection 14(b), by adding paragraph (5) thereto.

§ 47–2602. Imposition of tax.

AMENDMENTS

1962—Act Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 101(a), amended the section by striking out "2 per centum" and inserting in lieu "3 per centum" and by striking out "3 per centum" in the proviso and inserting in lieu "4 per centum".

EFFECTIVE DATE AND REFERENCES TO SECTIONS 47–2602 AND 47–2604

Section 103, act Mar. 2, 1962, provides as follows: "The amendments made by the first two sections of this title [amending sections 47–2602, 47–2604 and 47–2702] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Mar. 2, 1962]. From and after the effective date of such amendments, all references in the District of Columbia Use Tax Act [ch. 27, title 47, D.C. Code] to sections 125 [47–2602] and 127 [47–2604] of the District of Columbia Sales Tax Act shall be deemed to be references to such sections 125 and 127 as amended by the first section of this title."

§ 47–2604. Rate of tax.

* * * * *

(a) On each sale, other than sales of food for human consumption off the premises where such food is sold, and other than sales or charges for rooms, lodgings, or accommodations furnished to transients, such amounts as may be prescribed by the Board of Commissioners of the District of Columbia to carry out the purposes of this section.

* * * * *

(c) On each sale or charge for rooms, lodgings, or accommodations, furnished to transients, 4 per centum of the sales price. (Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 101(b)(c).)

AMENDMENTS

1962—Act Mar. 2, 1962, amended subsection (a) to read as above set out. For provision of subsection before this amendment see main volume of Code. Act also amended subsection (c) by striking out "3 per centum" and inserting in lieu "4 per centum".

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 47–2602.

§ 47–2609. Tax a preferred claim—Priority over property taxes.

NOTES TO DECISIONS

2. Insolvency proceedings

District of Columbia has preferred claim for taxes owed by a business when it is placed in receivership, becomes bankrupt, or makes an assignment for benefit of creditors or when its property is seized under distraint for property taxes. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

District of Columbia had existing choate leins against taxpayer's property for District of Columbia withholding and sales taxes assessed, due, or withheld prior to entry of judgment against taxpayer, and District was entitled to satisfaction out of funds otherwise payable to attaching judgment creditor, even though judgment had been

entered and sale ordered before District served notice of levy and warrant for distraint for unpaid taxes. *Id.*

§ 47–2610. Collection of tax—Liens—Jeopardy assessments—Distraint.

NOTES TO DECISIONS

1. Notice of priority of lien

Better practice is for District of Columbia to give creditors or potential creditors notice of its prior personal property tax claims, but the notice is not required by statute providing for collection by distraint and levy and for acquisition of lien by filing of certificate of delinquent taxes. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

Chapter 27.—COMPENSATING-USE TAX

§ 47–2702. Imposition of tax.

AMENDMENTS

1962—Act Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 102, amended section by striking out "2 per centum" and inserting in lieu "3 per centum".

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 47–2602.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chapter 3.—LAWS REMAINING IN FORCE

§ 49-301. Common law, principles of equity and admiralty, and acts of Congress to remain in force.

NOTES TO DECISIONS

4. British statutes

Section of the District of Columbia Code providing for an award of costs to the prevailing party was not a "statute of the United States" within Rule of Civil Procedure conferring discretion on a trial judge in allowing costs except when an express provision therefor is made in a statute of the United States, and therefore judges of the federal District Court of the District of Columbia have discretion as to whether to allow costs to the prevailing party. *Association of Western Railways et al.* v. *Riss & Company, Inc.* (1963, 320 F. 2d 785, 116 U.S. App. D.C. 63).

Parallel Reference Tables

Table 1.—STATUTES INCLUDED

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